

THE

SUPREME COURT OF THE UNITED STATES

No. 100 / 10

CHICAGO, MILWAUKEE & ST. PAUL RAILROAD
COMPANY, PLAINTIFF IN ERROR

THE STATE PUBLIC UTILITIES COMMISSION
HAMILTON,

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED FOR RECORD

(24,776)

(24,776)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 495.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE PUBLIC UTILITIES COMMISSION OF
ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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1-5

Railroad and Warehouse Commission.

State of Illinois, Springfield.

Orville F. Berry, Chairman; Bernard A. Eckhart, Jas. A. Willoughby.

William Kilpatrick, Sec'y.
Charles J. Smith, Ass't Sec'y.
F. G. Ewald, Consulting Engineer.
Thos. L. Wolf, Rate Clerk.

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Chairman—Central Union 4307.
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East St. Louis Department: Office, 126 Merchant's Exchange, St. Louis, Mo.

Telephone Main 2200.

File No. —.

Subject —.

November 13th, 1913.

Hon. J. H. Drennan, Clerk of the Circuit Court, Springfield, Illinois.

DEAR SIR: Attached hereto find certified copy of the record of this Office in the case of Poehlmann Bros. Company against the Chicago, Milwaukee & St. Paul Railway Co. and others, Commissioners' Docket #2082, which case has been appealed by the Chicago, Milwaukee & St. Paul Ry. Co. from the Order of the Commission to the Circuit Court of Sangamon County, Illinois.

I enclose also receipt for these papers, which kindly sign and return for our files.

Respectfully yours,

WM. KILPATRICK, *Secretary.*

W. K. E.

Enc.

6 Before the Illinois Railroad and Warehouse Commission.

POEHLMANN BROS. COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, CHICAGO and Eastern Illinois Railroad Company, Illinois Central Railroad Company, Chicago, Burlington and Quincy Railroad Company, Chicago, Indiana and Southern Railroad Company, Wabash Railroad Company, and F. A. Delano, E. B. Pryor and William K. Bixby, Receivers Thereof; Chicago and Alton Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Chicago, Terre Haute and South Eastern Railway Company, Chicago Junction Railway Company, Western Indiana Railroad Company, Belt Railroad Company of Chicago.

Petition for the Fixing of Through Rates on Intrastate Shipments of Coal and Manure to Morton Grove, Cook County, Illinois.

The Petition of the above named complainant respectfully shows:

1. That the complainant Poehlman Bros. Company is a corporation engaged in the business of growing and selling flowers in Chicago, Illinois, and in Morton Grove, Cook County, Illinois;

7 that the complainant owns and operates two greenhouses at Morton Grove, Illinois, which is a village about three miles outside of the corporate limits of the City of Chicago. That in the operation of its green houses, complainant consumes about 28,000 tons of bituminous coal per year, and a very large portion of this coal is shipped to complainant from points in the State of Illinois; that in the operation of the said green-houses, complainant uses about 700 cars of manure each year, and a large quantity of other materials. That the complainant has private and individual side tracks for the delivery of freight at its said greenhouses connected with the rails of the Chicago, Milwaukee and St. Paul Railway Company.

2. That the Defendant, Chicago, Milwaukee and St. Paul Railway Company, is a common carrier, engaged in the transportation of passengers and property for hire by railroad between points in the State of Illinois and Morton Grove, Illinois, and particularly in switching from Galewood, a station on its rails in Chicago, Cook County, Illinois, to the village of Morton Grove, freight carried to Chicago by other railroads from other points in this State of Illinois, that the other above name- defendant railroad companies transport or participate in the transportation of coal from various mines in the State of Illinois to points of junction in the City of Chicago with the said Chicago, Milwaukee and

8 St. Paul Railway Company, that in the transportation of coal destined to Morton Grove station, said last named defendant carries apply the proportionate rate applicable to business beyond Chicago, the amount of which is the Chicago rate less 10 cents a ton; that all of said carriers are subject to the pro-

visions of the Act of the Legislature of the State of Illinois, entitled "An Act to Establish a Board of Railroad and Ware house Commissioners and prescribe their duties," as amended by the Act approved April 7th, 1911.

3. That the complainant above named is daily receiving at the village of Morton Grove, cars of bituminous coal and cars of manure and other materials moved to said village by the said Chicago, Milwaukee & St. Paul Railway Company from its station known as Galewood in Chicago, Illinois, where the defendant receives cars from other common carriers, that the distance from Galewood to Morton Grove is about 11 miles; that the said Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, 40 cents per net ton; and that said carrier charges and collects the sum of 40 cents per ton for moving a car of manure from Glenwood to Morton Grove, that the said rates are shown in the tariffs of the Chicago, Milwaukee & St. Paul Railway Company filed

9 with this Commission Chicago, Milwaukee and St. Paul Tariff G. F. D. 2500 B. and supplement 34, and Supplement 47, which latter Supplement becomes effective July 5, 1913 to said Tariff, Chicago, Milwaukee and St. Paul Tariff, G. F. D. 4510 F. and G. F. D., 2323 D and Supplements thereto. That there are no through rates from mines in Illinois to Morton Grove. That the complainant has during several years last past, paid said charges on a great number of cars shipped to Morton Grove from points in the State of Illinois, and in the purchase of all of its bituminous coal, manure, and other materials is required to pay said charges of the defendant carriers.

4. Complainant further shows that a charge of 40 cents per net ton on coal and of 40 cents on manure and other materials, for the service of said Chicago, Milwaukee and St. Paul Railway for moving said cars from Galewood to Morton Grove, is unjust, unreasonable, excessive and discriminatory, and in violation of the provisions of the said Act to establish a Board of Railroad and Ware-house Commissioners and prescribe their duties, approved April 13, 1871, and the acts amendatory thereof and supplemental thereto.

5. Complainant further shows that many of the most important competitors of the complainant are located at Park Ridge and Des Plaines stations in Cook County, Illinois, a short distance from complainant, that there are six green houses at Park Ridge, and six at Des Plaines; that deliveries to Park Ridge and Des Plaines
10 require substantially the same service from Chicago as deliveries to Morton Grove, that all of said greenhouses at Park Ridge and Des Plaines enjoy deliveries of coal and other freight on the basis of the Chicago rate; that there is no switching charge on these commodities above the Chicago rate; that the products of the said greenhouses at Oak Ridge and Des Plaines are practically the same as the products of the complainants and are sold in the same market, and complainant is at a great disadvantage and burden because of the freight charges herein complained of and the same are unjustly discriminatory.

6. Complainant further shows, that located upon the Chicago, Milwaukee and St. Paul Railroad, east of Morton Grove, are three stations, known as Buena Park, Argyle Park and Edgewater; that deliveries by the Chicago, Milwaukee and St. Paul Railway Company at the said three last named stations require a longer switching service than deliveries at Morton Grove; that the charges of the said Chicago, Milwaukee and St. Paul Company from Galewood to Buena Park, Argyle Park and Edgewater have been fixed by the Interstate Commerce Commission at about 15 to 17 cents a ton, and that 10 cents per net ton thereof is absorbed by the carrier line; that all of the circumstances and conditions affecting the switching service to Morton Grove and to Buena Park, Argyle Park and Edgewater are substantially the same and the difference in charges therefor by the defendant carrier is an unjust and unlawful discrimination as against complainant.

11 7. Complainant further shows that deliveries of all commodities, including coal, are made to the Mark Manufacturing Company just outside of Evanston, Illinois, by the Chicago and Northwestern Railway Company on the basis of the Chicago rate, and that these deliveries involve a longer switching movement than deliveries to Morton Grove by this defendant.

8. Complainant further shows that deliveries are made by the Chicago, Milwaukee and St. Paul Railway Company, to a great many stations reached by its rails in Cook County, Illinois, on the basis of the Chicago rate, which stations require equal and in some cases more service by the Chicago, Milwaukee and St. Paul Railway Company than the movement of cars from Galewood to Morton Grove. Complainant shows that Addison Street station, Belmont Avenue station, Fullerton Avenue station, Mayfair, Grayland, and Franklin Park are among the stations on the said Chicago, Milwaukee and St. Paul Railway in Cook County, Illinois, which are given deliveries of coal and other commodities on the basis of the Chicago rate,

9. Complainant further shows that the North line of the Chicago Switching District is irregularly drawn and territory directly west of Morton Grove and for several miles farther north is inside the Chicago Switching District, and territory just east of Morton Grove and extending at least a mile north is also within the limits of the said Chicago Switching District.

12 10. Complainant further shows that the defendant carrier hauls coke from Chicago, Illinois to Milwaukee, Wisconsin, a distance of eighty-five miles, for a charge of 45 cents per net ton. That this rate is shown by Item Number 40 in C. M. & St. P. G. F. D. Number 2500 B. That coke is a commodity that requires more of the equipment of the carrier to transport an equal number of tons than does coal, and is a commodity that almost invariably takes a higher rate than bituminous coal.

11. Complainant further shows that complainant, as a consignee of freight at Morton Grove, Cook County, Illinois is directly and grievously discriminated against by the said defendant carriers; that the charge of 40 cents per net ton made against complainant as a

consignee bituminous coal and the charge of 40 cents per net ton made against complainant as consignee of manure and other materials is unjust, unreasonable, excessive, and discriminatory and complainant respectfully submits to this Honorable Commission that in view of the practically uniform custom at or near Chicago to make deliveries on the basis of the Chicago rate, that deliveries to the Complainant at Morton Grove Station should be made on that basis.

12. Complainant therefore says, that it has been subjected to the payment of rates for transportation which, when exacted were, and are now unjust and unreasonable, and in violation of the Act to

13 establish a Board of Railroad and Warehouse Commissioners and prescribe their duties, approved April 13, 1871, and the acts amendatory thereof and supplemental thereto.

13. Complainant further shows that it has at numerous times protested to the defendant against its above mentioned charge for hauling coal to Morton Grove, but the protests and requests of the complainant have been unavailing.

Wherefore, Petitioner, prays that the defendant may be required to answer the charges herein, that after a hearing and investigation, an order may be made, commanding the defendant to desist from said violation of the "Act to establish a board of Railroad and Warehouse Commission, and prescribe their duties", approved April 13, 1871, and the Acts amendatory thereof and supplemental thereto, and that this Honorable Commission may ascertain and determine the reasonable and lawful through rates and charges for transporting coal from all mining districts in Illinois to Morton Grove and the reasonable and lawful charge for moving cars of manure from Galewood Station to Morton Grove applicable to intrastate shipments, and order the said carriers to conform thereto, and complainant further prays for reparation herein, and for such other and further order as this Commission may deem just and reasonable in the premises.

(Signed)

POEHLMANN BROS. CO.,
By M. F. GALLAGHER,
Its Attorney.

Address of Poehlmann Bros. Company, Complainant, Morton Grove, Illinois.

Address of Guerin, Gallagher & Barrett, Complainant's Attorneys, 1406 Tribune B'd'g, Chicago, Illinois.

14 Before the Illinois Railroad and Warehouse Commission.

POEHLMANN BROS. COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.

Answer.

The separte answer of the respondent, Chicago, Milwaukee & St. Paul Railway Company, to the Petition of Complainant in the above entitled proceeding, respectfully shows.

I.

Answering paragraph one, this respondent admits the allegations therein contained.

II.

Answering paragraph two, this respondent admits the allegations thereof in so far as they refer to this respondent.

III.

Answering paragraph three, this respondent admits the allegations thereof.

IV.

Answering paragraph four, this respondent denies that a charge of 40 cents per net ton for transportation of coal, manure and other material, from Galewood to Morton Grove, excessive and discriminatory, and in violation of the Act to regulate Commerce as in said paragraph four alleged.

15

V.

Answering paragraph five, this respondent has not knowledge or information sufficient to verify the averments therein contained.

VI.

Answering paragraph six, this respondent denies that the circumstances and conditions affecting switching service to Morton Grove, Buena Park, Argyle Park and Edgewater are substantially the same, and denies that the difference in charges therefore made by the respondents, Chicago, Milwaukee & St. Paul Railway Company, is unjust and an unlawful discrimination against complainant.

VII.

Answering paragraph seven, this respondent has not knowledge or information sufficient to verify the allegations therein contained.

VIII.

Answering paragraph eight, this respondent denies that it makes deliveries to a great many stations reached by its rails in Cook County, Illinois, on the basis of the Chicago rate, which stations require equal and in some instances more service by the Chicago, Milwaukee & St. Paul Railway Company, than the movement of cars from Galewood to Morton Grove, as in said paragraph alleged.

XI.

Answering paragraph nine, this respondent denies that Morton Grove is within the Chicago Switching District of this respondent,

and denies that points more remote from the City of Chicago than Morton Grove are within its Switching District.

16-18

X.

Answering paragraph ten, this respondent refers to its regularly published Tariffs on file with the Commission for a correct statement of its Tariff on Coke between Milwaukee and Chicago, should that tariff on that commodity be considered material to the issue herein.

Answering paragraph eleven and twelve, this respondent denies that a charge of 40¢ per net ton made against complainant as consignee of bituminous coal and of manure and other materials is unjust, unreasonable, excessive, and discriminatory, and in violation of the Act to establish a board of Railroad and Warehouse Commissioners, and describe their duties, approved April 13, 1871, and the Acts amendatory thereof and supplemental thereto.

XI.

Further answering this respondent denies each and every allegation in said complaint contained, not hereinbefore admitted, denied, or otherwise answered unto.

Wherefore having fully answered petition of Complainant in the above entitled proceeding, this respondent prays that it be dismissed hence.

Dated at Chicago, Illinois, August 6th, 1913.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
WAY COMPANY,

(Signed)

By O. W. DYNES,
Its Commerce Counsel.

* * * * *

19 Before the Honorable Railroad and Warehouse Commission
of the State of Illinois.

POEHLMANN BROTHERS COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ILLINOIS
CENTRAL RAILROAD COMPANY et al.

Separate Answer of Illinois Central Railroad Co.

And now come The Illinois Central Railroad Company, by John G. Drennan, its Attorney, and for answer to the petition in the above entitled cause says,

1. This respondent has no knowledge of the allegations contained in section one of complainant's petition.

2. This respondent admits that it is a common carrier engaged in interstate and intrastate Commerce, and as such subject to the laws of the United States and the State of Illinois. This respondent also admits that on shipment of coal from mines located on its road to Morton Grove, Illinois, it applied the proportional rate to Chicago,

which is ten cents per ton less than the rate for delivery in Chicago proper.

3. Answering section three of said petition, this respondent denies that it has not through rates on coal from mines located on
20 its road to Morton Grove, Illinois, but on the contrary avers that it publishes a tariff or through rates and charges on said commodity between said points.

Further answering, this respondent says that it has no knowledge of the other allegations contained in section 3 of said petition.

5. This respondent has no knowledge of the allegations contained in section 4 of complainant's petition and respectfully submits that said allegations should be answered by the respondent, Chicago, Milwaukee & St. Paul Railway Company.

5. Answering section five of said petition, this respondent says that it has no knowledge of the number or importance of complainant's competitors alleged to be located at Park Ridge and Des Plaines, Illinois.

Further answering this respondent says that both Park Ridge and Des Plaines are within the Chicago switching District, and that Chicago rates apply on coal from Illinois mines to said points, but it denies that said complainant has been discriminated against because of the difference in the rates and charges to Morton Grove, Illinois, as compared with Park Ridge and Des Plaines, and this respondent further says that the rates charged to Park Ridge and Des Plaines compared with Morton Grove furnish no just ground of comparison.

21 This respondent further says that if the Chicago rates should be made to apply on coal to Morton Grove, it will involve the filing of numberless complaints against this and other roads by shippers located at points even beyond said village and other points, and there will be no way of computing what territory should be considered as within the switching district of Chicago.

6. This respondent has no knowledge of the allegations contained in section 6, of said petition, and neither admits or denies the same, but respectfully asks that the complainant be required to make strict proof thereof.

7. This respondent has no knowledge of the allegations contained in section seven of said petition.

8. This respondent has no knowledge of the allegations contained in section eight of complainant's petition and respectfully submits that the allegations contained in said section should be answered by the respondent, Chicago, Milwaukee & St. Paul Railway Company.

9. This respondent denies the allegations contained in section nine of said petition.

10. This respondent has no knowledge of the allegations contained in section ten of said petition and respectfully submits that the same should be answered by the respondent, Chicago, Milwaukee & St. Paul Railway Company.

11. This respondent denies that it has been guilty of discrimination against the complainant in its rates and charges on coal to

Morton Grove, or any other point in the State of Illinois, but on the contrary avers that its rates and charges are uniform, just and reasonable.

22-28 12. This respondent denies that it has subjected the complainant to the payment of rates and charges for transportation which are unjust, unreasonable or discriminatory or in violation of the Railroad and Warehouse Commission Act of the State of Illinois, or any other law, but, on the contrary avers the said rates and charges are unduly low as compared with the service performed for said complainant, and that the rates of said commodity should be raised rather than reduced.

13. This respondent denies that said complainant has at numerous times protested against the rates and charges on coal to Morton Grove, Illinois, and even if said protests were made, this respondent says that said complaint has no just ground of complaint on account of said rates and charges.

14. This respondent, further answering, says that this Honorable body has no jurisdiction of the subject matter of the complaint herein.

For the reasons above set forth, and as will more fully appear at the hearing of said cause, this respondent respectfully submits that said complaint should be dismissed.

ILLINOIS CENTRAL RAILROAD
COMPANY,

(Signed)

By J. G. DRENNAN, *Its Attorney.*

* * * * *

29 Before the Illinois Railroad and Warehouse Commission.

Docket No. 2082.

POEHLMANN BROS. COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.

Answer of the Belt Railway Company of Chicago, One of the Defendants in the Above-entitled Cause.

And now comes The Belt Railway Company of Chicago, by C. G. Austin, its attorney, and exhibits this its separate answer to the complaint in this proceeding, and respectfully represents:

That it is a railroad corporation, organized and existing under and by virtue of the laws of the State of Illinois:

That the business in which it is engaged is that of switching of freight cars, loaded and empty, to and from industries located on its line, and to and from connections of different railroad companies:

30 That it does not participate in any through rates; that it makes an arbitrary charge of a fixed and certain amount per car, regardless of the commodity with which such car may be loaded.

That this charge is not based upon any classification of freight

contained within any car, or the classs thereof, or the kind thereof, except from the billing furnished with cars by Railroad companies from whom it may receive loaded cars, that its business is wholly within the State of Illinois and wholly within Cook County in said State.

That complainant's greenhouses and business enterprise is not located upon the railroad of this defendant, that this defendant has no connection with any of the buildings or greenhouses named in the Bill of complaint filed herein.

That it is not interested in, to or about the matters and things in controversy in this proceedings and it prays to — dismissed hence.

All of which is respectfully submitted.

THE BELT RAILWAY COMPANY
OF CHICAGO,

(Signed)

By C. G. AUSTIN, *Its Attorney.*

31 Before the Railroad and Warehouse Commission of the State
of Illinois.

2082.

RAILROAD AND WAREHOUSE COMMISSION ex Rel. POEHLMAN BROS.
COMPANY, Complainant,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.,
Defendants.

*Complaint of Rates on Coal and Manure Shipped to Morton Grove,
Illinois.*

The record shows that the Complainant herein owns and operates greenhouses at Morton Grove, Illinois, which village is about three miles outside of the corporate limits of the City of Chicago, that in the operation of such greenhouses the complainant consumes in the neighborhood of thirty thousand tons of bituminous coal annually and that a large portion of this coal is shipped to complainant from points in the State of Illinois, that further in the operation of said greenhouses said complainant used in the neighborhood of seven hundred cars of manure each year, and a large quantity of other materials, that the complainant has private and individual side tracks for the delivery of freight at its said greenhouses connected with the rail of the Chicago, Milwaukee & St. Paul Railway Company.

32 The record further shows that the complainant is daily receiving at the village of Morton Grove cars of Bituminous coal and manure as well as other materials, moves to said village by the Chicago, Milwaukee & St. Paul Railway Company from its station, known as Galewood, in Chicago, Illinois, where the defendant Chicago, Milwaukee & St. Paul Railway Company receives cars from other common carriers.

The record further shows that from Galewood to Morton Grove is

a distance of about eleven miles, and that the defendant Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, *forth* cents per net ton, and that said defendant road also charges and collects the sum of forty cents per net ton for moving a car of manure from Galewood to Morton Grove, that said rates are shown in the tariffs of the Chicago, Milwaukee & St. Paul Railway Company filed with this Commission, namely Chicago, Milwaukee & St. Paul tariff G. F. D. 2500 B, and supplement 34 and Supplement 47, which later supplement became effective July 5 1913, to said tariff and Chicago, Milwaukee & St. Paul tariff G. F. D. 4510, F. and G. F. D. 2323 D, and Supplements thereto.

The complaint shows that the facts are, that there is no through rate from the coal district to Morton Grove. The record further shows that other common carriers are delivering coal and other material to similar plants upon their particular lines of road for what is known as the Chicago rate, and it is charged that it is discrimination upon the part of the defendant Chicago, Milwaukee & St. Paul Railway Company in not so delivering coal to the complainant to Morton Grove. It is charged in the Complaint that the record shows that this defendant road is making deliveries at several stations upon its road on the basis of the Chicago rate, which stations require equal and in some cases more service by the said defendant road, that the movement of cars from Galewood to Morton Grove.

It appears in the record herein that the charges applicable on coal from mines in Illinois to Morton Grove are made up of two factors. First.—The proportional rate to Chicago of the carrier obtained the line haul. Second.—The charge of the Chicago, Milwaukee & St. Paul Railway Company for hauling the cars from Galewood to Morton Grove of Forty cents per net ton, it appearing that the carrier obtaining the line haul usually absorbs the switching charge of the Belt Railway out of its proportional charge to Chicago.

While the complaint herein asked for the establishment of through rates Via the several defendants roads herein from points in Illinois to Morton Grove, the record also shows that the only rate attached by the complainant is the charge of forty cents per net ton made by the Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove and all of the evidence before the Commission in this case is directed against the unreasonableness of this rate.

The reasonableness of the charge of the other defendant roads for the line haul was not attached in any manner in this proceedings, and no evidence offered upon that subject hence we assume that the line haul charge is considered reasonable, and without going into *to* detail upon that branch of the case, it is sufficient to say that the Commission does not feel it necessary at this time to enter into the question of discrimination as charged in the complaint, nor does it feel that it is necessary or that it will be justified in entering into the question of through rates between the other defendant roads, and the defendant Chicago, Milwaukee & St. Paul Railway Company, from the coal producing district of Illinois

to Morton Grove, believing that the matter can be properly disposed of without entering into that question.

This leaves for consideration then the one question of the reasonableness or the unreasonableness of the charge of Forty cents per net ton by the defendant Chicago, Milwaukee & St. Paul Railway Company between Galewood and Morton Grove on coal and manure.

After a careful investigation of the rates charged by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to other stations on its lines of road in the vicinity of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared
35 with the charge made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove, the Commission believes that said charge of forty cents per net ton to be an unreasonable charge.

It is contended with considerable earnestness that no order should be made in this proceeding for the reason that through rates on coal and also switching rates should be taken up in their entirety, and disposed of, and not upon individual complaint. While the Commission appreciates the need of a general revision of through rates, as well as switching charges, yet it does not feel that it should debar any individual from filing his or its complaint with the Commission and having heard and action taken thereon, and the Commission being fully advised upon consideration, finds that the charge of forty cents per net ton on coal and manure, made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove *is* an unreasonable charge.

It is therefore ordered, adjudged and decreed by the Commission that the said rate of forty cents per net ton on coal to Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed twenty cents per net ton on coal, and not exceed twenty five cents per net ton on manure from Galewood to Morton Grove, and the Defendant the Chicago, Milwaukee & St. Paul Railway Company is hereby directed to cease and desist from asking
36-40 any greater charge than herein above specified on movements of coal and manure from Galewood to Morton Grove, the Commission finding that the charge herein made and specified, is a reasonable charge thereof.

By order of the Commission this 25th day of October 1913, dated at Springfield, Illinois.

(Signed)

O. F. BERRY, *Chairman.*

(Signed)

B. A. ECKHART,
Commissioner.

(Signed)

J. A. WILLOUGHBY,
Commissioner.

* * * * *

41-45 And afterwards to-wit on the 2nd day of May A. D. 1914, there was filed in the office of the clerk of the Sangamon County Circuit Court a certain Stipulation, a copy of the said stipulation being in the words and figures as follows to-wit:

STATE OF ILLINOIS,
Sangamon County, ss:

In the Circuit Court of Sangamon County.

ILLINOIS RAILROAD AND WAREHOUSE COMMISSION ex Rel. POEHL-
MANN BROS. COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Stipulation.

It is hereby stipulated by both parties that the above entitled cause may be, and is hereby submitted to His Honor, Judge Creighton, for consideration and decision upon the evidence introduced by both parties during the hearing of said cause before the Illinois railroad and Warehouse Commission.

It is further stipulated, that an order may be entered by the Court allowing time for the filing of Brief and that the Chicago, Milwaukee & St. Paul Ry., shall submit within Ten (10) days from this date, and Poehlmann Bros. Company within five (5) days from this date thereafter and the Chicago, Milwaukee and St. Paul Railway shall then have three (3) days for the filing of a Reply Brief, and thereafter, on some date convenient to the Court, the case shall be set down for oral argument.

Dated, April 29, A. D. 1914.

M. F. GALLAGHER,

Attorneys for Poehlmann Bros. Company.

* * * * *

O. W. DYNES,

*Attorneys for Chicago Milwaukee and
St. Paul Railway Company.*

46-47 And afterwards to-wit: on the 25th day of September A. D. 1914, there was filed in the office of the Clerk of the Sangamon County Circuit Court the Testimony, taken and heard before the Railroad and Warehouse Commission and which said testimony is incorporated herein by the stipulation of the parties hereto, and said testimony being as follows to-wit:

* * * * *

48 Chairman you may proceede and number 2082.

Mr. Gallagher: The Complaint is Phoelmann Brothers Company. They operate a greenhouse plant—a very large greenhouse plant at Morton Grove a village inside of Cook County about three miles north of the City Limits, and they complaint of their coal rate, Morton Grove is on the Chicago, Milwaukee and St. Paul Railway and is a station about nine miles from Galewood a transfer point, where coal is delivered by the coal carrying roads through the St. Paul. The rate of the Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove is forty cents per ton

ten cents of that absorbed by coal carrying road so that Morton Grove is paying to-day thirty cents a ton the Chicago rate plus thirty cents a ton. Now he complains particularly because his competitors in the greenhouse business in Cook County are getting their coal on the Chicago rate.

Most of the competitors of Phoelmann Bros. Greenhouse business located at such places as Des Plains Station and other places up to the north of Cook County here are receiving their coal under the Chicago rate which puts him at a disadvantage of about thirty cents a ton on his coal in conducting his business.

First I want to give your Honor an impression of the case and then suggest to Mr. Dynes if agreeable to him, we submit the case on the transcript of evidence taken in a similar case before the Interstate Commerce Commission. At the time the case was filed before the Interstate Commerce Commission the complainant was buying its coal in West Virginia. He is now buying practically all of his coal in Illinois and he consumes thirty thousand tons of Illinois coal a year so all of the case is one for this Commission and the question before the Interstate Commerce Commission which would come largely in between. It is now under advisement, however. But the evidence was all taken in the case before the Interstate Commerce Commission and, if it is agreeable to Mr. Dynes, I am willing to submit the case on this transcript after asking Mr. Poehlmann a few questions.

* * * * *

50 I want to ask Mr. Poehlmann a few questions and I am willing to stipulate that the case be submitted on this evidence.

* * * * *

51 Mr. W. W. Collin, Jr.: I appear for the C. I. & S. and the Big Four and it is perfectly agreeable.

Mr. Clardy: So far as the C. E. I. R. R. is concerned I understand this doesn't involve our proportional rate to Chicago.

Mr. Gallagher: We are asking for a through rate.

Mr. Clardy: That is our understanding. Of course if this record attacks the reasonableness of that rate we could not stipulate as to that.

Mr. Gallagher: This evidence will not.

Mr. Clardy: It merely questions the charge from Galewood to Morton Grove and Park Ridge.

Mr. Dynes: Our position has been that it is the question of the through rate. I merely state that.

Mr. Clardy: I don't know whether or not it attacks the through rate. If it does, of course, we could not stipulate.

Mr. Gallagher: This record doesn't go into the reasonableness of your rate at all.

Mr. Clardy: Then, we have no objection.

Mr. Cameron: I would like to say a word on behalf of the Illinois Central R. R. Company in connection with this case.

52-57 We are made party defendant here. I want to say first, in my opinion, and I think in the opinion of the traffic of-

ficials of the other coal carrying roads in Illinois, there is no more important question that they have confronting them at this time than the one involving rates on coal from State and Interstate points to points in the Chicago switching district and adjacent to that district. Now Mr. Dynes says he takes the position it is a question of the through rate and, of course we know so far as the consignee is concerned that is true but no agreements or arrangements that Illinois and interstate roads entered into with the switching roads at Chicago which may be said has only been carried out in part so far as some of the roads are concerned. We apply the Chicago rate over an immense territory. The Chicago rate on Illinois and Indiana coal is a low rate. It is the lowest rate for any corresponding service that we have been able to find.

Mr. Gallagher: I will find you a great many.

Mr. Cameron: For corresponding service?

Mr. Gallagher: Yes. Up to Southern Ohio lake ports you will find them.

* * * * *

58 Mr. Clardy: We understand our proportional rate is not involved. If it is we cannot agree.

Mr. Gallagher: The complaint asks for the establishment of through rates from the mines to Morton Grove.

Mr. Dynes: He is asking about the record we are stipulating in.

Mr. Gallagher: What is the name of your Company and your official connection with it?

Mr. Poehlmann: Phoelmann Brothers Company. I am Secretary and Treasurer of the Company.

Q. About how many tons of coal a year do you consume in your business?

59 A. Approximately thirty thousand tons. The probabilities are the tonnage will be increased on account of using Illinois coal. These thirty thousand tons are based on about two-thirds eastern coal and one-third Illinois coal.

Q. That proportion of your coal comes from mines in the State of Illinois?

A. At the present time almost all of it.

Q. Ninety percent would you say or over?

A. I would say perhaps ninety-five percent.

Q. How many cars of manure do you use in a year in your business?

A. Probably five hundred, as near as I can judge.

Q. Now have you a freight bill showing freight rates on manure?

A. I have, I believe.

Q. What is your rate?

A. On manure we pay two and a half cents a hundred pounds from the stock yards to Morton Grove. And two cents from points along the St. Paul road. I don't know just what street these cars are loaded on.

Q. What part of Chicago are they loaded?

A. Somewhere along the Panhandle. Where the St. Paul runs parallel with the Panhandle.

- Q. They are loaded on to cars on the rails of the C. M. & St. P. Ry, in Chicago?
- 60 A. Yes, sir.
- Q. And transported to Morton Grove and you pay the St. Paul Company forty cents a ton?
- A. Yes, sir.
- Q. About what is the tonnage in a car of manure?
- A. It will vary from probably fifty thousand pounds to one hundred thousand pounds.
- Q. It runs about the same as coal does it?
- A. Yes, sir.
- Q. Now on coal you pay the Chicago rates plus thirty cents a tone, is that right?
- A. On Illinois and Indiana coal.
- Q. Illinois and Indiana coal?
- A. Yes.
- Q. Now where are your competitors in the green house business located?
- A. Along the Northwestern, Park Ridge and Des Plaines. That is where our principal competitors are. Also along the Northwestern at Rosehill and Summerdale.
- Q. Have you any competitors on the rails of the Chicago, Milwaukee and St. Paul Railway?
- A. I believe there is one at or near Greenwood Station.
- Q. Greenwood station is on the Northwestern Railway?
- A. I guess that is right.
- Q. How about over around Edgewater?
- A. They are only small green houses men there. I don't know where they get or buy it.
- Q. You stated about thirty percent of your operation is fuel, is that right?
- 61 A. Approximately, yes.
- Q. If the Commission please so far as the rates are concerned to all these other points I think that is all covered in detail in this transcript.

Cross-examination by Mr. Dynes:

- Q. Who is the President of your Company?
- A. John Poehlmann.
- Q. Is it a corporation?
- A. Yes, sir.
- Q. How long have you been in business there?
- A. As a partnership between the three brothers we were in business ten years before we incorporated. It is still the same partners only incorporated.
- Q. You mean you continued as partners for a period of ten years?
- A. Yes and then we incorporated.
- Q. How long ago did you incorporate?
- A. In 1901.
- Q. Then you have been about twenty-two years in the business?

A. No, twenty-three years. There was a split in the partnership for a year. We incorporated a year after that split.

Q. Have you extended the business any?

A. We have some, yes.

Q. Are you consuming any more coal than you did ten years ago?

62 A. Considerably more.

Q. Fifty percent more?

A. Yes but this condition has been growing in the last ten years.

Q. Do you use any more manure for fertilizer, than you did ten years ago?

A. Yes, sir.

Q. Have you added any acreage to your plant in the last ten years?

A. Yes we have bought from time to time.

Q. How much did you have approximately twelve years ago when you incorporated?

A. I could not just exactly tell you how much larger we are now than we were ten years ago.

Q. Do you know how many acres you have bought in the last twelve years?

A. Well we had to buy land which was necessary for the business.

Q. Can you give us any idea of how many acres you bought?

A. We probably have on- hundred and seventeen all together.

Q. How many of those were bought in the last twelve years?

A. About seventy-five acres, I judge in the last ten years.

63 Q. More than half?

A. Yes.

Q. What are you capitalized for?

A. Ninety thousand dollars.

Q. Ninety thousand dollars?

A. Yes.

Q. Do you know approximately what your plant is worth at the present time?

A. Yes, I think I do.

Q. Have you any objection to stating that?

Mr. Gallagher: I will admit the business out there has been developing, if that is the point counsel wishes to bring out. They have been prosperous but, as the witness has stated the grass acreage has practically developed in the last five years. Competition is much more of a factor in the growing and selling of flowers.

Mr. Dynes: It has more than doubled.

Witness: The increase in our business was made principally within right immediately following the incorporation. We had some good years until about 1906 the business was very good and we went right ahead of course to extend our business. Since 1907 the competition has been very much keener because of the fact so many have sprung up around Des Plaines, Park Ridge and other points where they had an advantage over us. At the present time the green

houses of our capacity situated at Des Plaines has an advantage of over twelve thousand dollars over us. That would mean in five years it would have the best of us of sixty thousand dollars plus the money they are using and that is what is putting us at a disadvantage at the present time.

64 Mr. Dynes: All I was asking this question for was whether they had prospered under the rates or not. Mr. Gallagher spoke of the dip in the Northwestern Railway Company's north switching limits boundary.

Mr. Gallagher: That is the official Lowrey Tariff that you have in your hands. The official map of the Chicago switching territory.

Mr. Dynes: The blue line with the dip to the south or prongs to the north representing the Northern boundary of what you call the official switching map is co-incident with the northern switching boundary of the Chicago Northwestern and no other railway company, isn't that true?

Mr. Poehlmann: I don't know.

Q. Well you do know that there is no dip in the northern switching boundary of the C. M. & St. P. Railway Company corresponding with this dip that Mr. Gallagher has mentioned.

Mr. Poehlmann: Not that I know of.

Q. Now you have stated today and at the other trial on the hearing on the interstate feature of this cause, that you encountered no competition on the rails of the C. M. & St. P. Railway but did encounter it on the rails of the various other railway companies near Chicago. Do you claim that the C. M. & St. P. Railway Co. should meet the rates of the Northwestern Railway Company in order to put you on a proper footing that you as a shipper on our line should be on a proper footing with competitors that are shippers on their line?

65 A. I would think so, yes.

Q. That is all.

Mr. Gallagher: I would like to offer these two expense bills in evidence to show the charge for moving cars of manure in Cook County by the St. Paul Company.

Commissioner Eckhart: What do they charge?

Mr. Gallagher: From the stock yards forty-five cents a ton and from points loaded on their rails forty cents a ton.

Mr. Dynes: From what points on our rails was it loaded?

Mr. Gallagher: Can you state more definitely, car #188607?

Mr. Poehlmann: I don't know where that manure is loaded. They used to load those cars on Green Street.

Mr. Gallagher: It says freight from Division Street.

Mr. Poehlmann: I don't know where that point is.

Mr. Gallagher: The other is freight from the U. S. Yards. I ask to have these marked Complainant's Exhibits "A" and "B".

Whereupon the aforesaid documents so offered and received in evidence were marked complainant's Exhibits "A" and "B" respectively and are in the words and figures following to-wit:

Mr. Gallagher: Now I believe all other material matters are set

66-68 forth in the transcript and if I have leave to file a brief I am willing to submit the case, on the transcript.

* * * * *

69-89 Mr. Gallagher: I think we better have the stipulation clearly—defined or we will never know what is in this record. As I understand, we all stipulate that the transcript in the evidence of Phoelmann Brothers vs. C. M. & St. P. Ry. Co., docket 4762, before the Interstate Commerce Commission will be considered as read into the evidence in this case and considered by this commission.

Chairman: I so understand it.

* * * * *

90 And afterwards to-wit, on the 5th day of November A. D. 1914, the same being one of the term days of the November Term A. D. 1914, of the Sangamon County Circuit Court, the following proceedings *was* had and entered of record as follows to-wit:—

STATE OF ILLINOIS,
Sangamon County, ss:

In the Circuit Court, November Term, A. D. 1914.

ILLINOIS RAILROAD AND WAREHOUSE COMMISSION *ex Rel.*
POEHLMANN BROS. COMPANY, Complainants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Defendants.

Appeal from Railroad & Warehouse Commission.

Order.

The appeal in the above entitled cause having come on for hearing *on* the record of the Chicago, Milwaukee & St. Paul Railway Company, as certified to by it, and the Court having heard the arguments of counsel, and having considered the facts and circumstances appearing in the evidence as shown by said record, and being fully advised in the premises, doth find that the said Commission had jurisdiction of the subject matter and of the parties
91 thereto, and that it does not clearly appear that the finding of the said Commission was against the manifest weight of the evidence presented to and before the said Commission for and against said order and decision, and that the said order and decision made and entered herein by the Railroad and Warehouse Commission of Illinois on the 25th day of October A. D. 1913, is neither unlawful nor reasonable, and that the said order and decision should be affirmed.

It is therefore, ordered, adjudged and decreed by the court,

That the said order and decision made and entered herein by the Railroad and Warehouse Commission of Illinois on the 25th day of October A. D. 1913, be, and it is affirmed.

Dated this 5th day of November, 1914.

Entered.

JAMES A. CREIGHTON, *Judge*. [SEAL.]

And the defendant, Chicago, Milwaukee & St. Paul Railway Company by its solicitors excepts to the foregoing order.

92 And afterwards to-wit, on the 6th day of November A. D. 1914, the same being one of the term days of the November term A. D. 1914, of the Sangamon County Circuit Court, the following proceedings *was* had and entered of record as follows: to-wit:—

RAILROAD AND WAREHOUSE COMMISSION OF ILLINOIS ex Rel.
POEHLMANN BROS. COMPANY, Complainants,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.,
Defendants.

Appeal from Railroad and Warehouse Commission.

This day come again the parties hereto by their respective solicitors and the termination of the Existence of the Railroad & Warehouse Commission is suggested and that it is succeeded by the State Public Utilities Commission of Illinois.

And the defendant Chicago, Milwaukee and St. Paul Railway Company by its solicitors prays an appeal of this cause to the Supreme Court of the State of Illinois, which is allowed by the Court upon the said Defendant filing its bond in the sum of Five Hundred Dollars (\$500) to be approved by the Clerk of this Court in Forty (40) days. Certificate of evidence and bill of exceptions in Sixty (60) days. It is ordered by the Court that the order of the Railroad and Warehouse Commission appealed from, be and the same is stayed pending this appeal.

* * * * *

93 And afterwards to-wit, on the 24th day of November A. D. 1914, there was filed and approved in the Office of the Clerk of the Sangamon County Circuit Court a certain Appeal Bond to the Supreme Court,

* * * * *

94 & 95 And afterwards to-wit on the 9th day of December A. D. 1914, there was filed in the office of the Clerk of the Sangamon County Circuit Court, a certain Praecipe for Record to the Supreme Court; a copy of the said Praecipe being in the words and figures as follows to-wit:

* * * * *

96

STATE OF ILLINOIS,
Sangamon County, ss:

In the Circuit Court of Sangamon County.

RAILROAD AND WAREHOUSE COMMISSION OF ILLINOIS ex Rel. POEHL-
MANN BROS. COMPANY, Appellee,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

Stipulation.

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause that the Transcript of Evidence and all other documents that were certified by the Railroad and Warehouse Commission of Illinois to the Circuit Court of Sangamon County for the consideration of said Court in passing upon questions presented by the appeal herein may be certified by the Clerk of said Circuit Court to the Supreme Court of the State of Illinois in lieu of certified copies thereof.

Dated at Chicago, Illinois, this 1st day of December A. D. 1914.

M. F. GALLAGHER,

Attorney for Appellee,

O. W. DYNES AND

S. D. SCHOBEL,

Attorney for Appellant.

97

STATE OF ILLINOIS,
Sangamon County, ss:

I, J. H. Drennan, Clerk of the Circuit Court within and for the County of Sangamon, in the State of Illinois, and keeper of the records and seal of said Court, do hereby certify that the foregoing is a true, perfect and complete copy of the convening order of said Court for the November Term A. S. 1914, also a true, perfect and complete transcript of the record now remaining in my office, also copy of appeal bond, and I further certify that this Transcript includes the Transcript of record from the Railroad and Warehouse Commission as certified to by its Secretary to this Court, and also the Testimony taken and heard before the Railroad & Warehouse Commission and which said Transcript and Testimony from the Railroad & Warehouse Commission are incorporated herein by the stipulation of the parties hereto, in a certain cause lately pending in said Court on the Chancery side thereof, wherein Railroad and Warehouse Commission of Illinois ex rel. Poehlmann Bros. Company, Complainants vs. Chicago, Milwaukee & St. Paul Railway Company et al. Defendants, as the same appears from the records and filed of said Court in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Springfield this 9th day of December 1914.

[SEAL.]

J. H. DRENNAN, *Clerk.*

Assignment of Errors.

Now comes the Chicago, Milwaukee & St. Paul Railway Company and assigns the following errors of record.

First. The order of the Railroad and Warehouse Commission appealed from places a burden upon interstate commerce and is in violation of the Commerce Clause of the Federal Constitution and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Second. The order of the Railroad and Warehouse Commission appealed from works a discrimination against interstate coal and produce-s and shippers thereof in favor of Illinois coal and producers and shippers thereof in respect of freight charges for identically the same service and is in violation of the Commerce Clause of the Federal Constitution, and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Third. The order entered by the Railroad and Warehouse Commission is outside the scope of the complaint and answer on which the hearing was had and deals with a subject not in issue and was and is, therefore, unreasonable and unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

99 Fourth. The Railroad and Warehouse Commission was without jurisdiction of the subject matter prior to and at the time of entering the order appealed from and said order is unreasonable and unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Fifth. The Railroad and Warehouse Commission did not notify the Chicago, Milwaukee & St. Paul Railway Company that it would hold a hearing on the subject covered by its order and the Chicago, Milwaukee & St. Paul Railway Company was not given a hearing on said subject as required by the Statutes of Illinois before the entry of said order and said order is, therefore, unreasonable and unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Sixth. The order of the Railroad and Warehouse Commission directs the charging of a lower rate on the commodities involved than is fixed by the so-called Illinois Tariff for the same commodities hauled equal distances in other parts of the State of Illinois and if given effect would result in discrimination in favor of the complainant in this case and against producers and dealers in coal shipping elsewhere within the State of Illinois and against consumers of coal other than complainant shipping elsewhere within the State of Illinois and said order, therefore, — unreasonable

100 and and unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Seventh. The order of the Railroad and Warehouse Commission appealed from if given effect would give to one carrier an unfair or unequal advantage over another, contrary to the provisions of Section 27 of an act entitled an Act to Establish a Board of Railroad and Warehouse Commissioners and Prescribe their Powers and

Duties, approved April 13, 1871, as subsequently amended and the Circuit Court of Sangamon County erred in sustaining and affirming said order.

Eighth. The order of the Railroad and Warehouse Commission appealed from is unlawful and unreasonable and the Circuit Court of Sangamon County erred in sustaining and affirming said order.

S. D. SCHOLES &

O. W. DYNES,

Attorney- for Appellant.

101 & 102 STATE OF ILLINOIS,
Sangamon County, ss:

I, J. H. Drennan, Clerk of the Circuit Court within and for the County of Sangamon, in the State of Illinois, and keeper of the Records and Seal of said Court, do hereby certify that the attached Transcript of Testimony is the Transcript of Testimony filed in this cause, on to-wit, the 25th day of September, A. D. 1914, and which Testimony is referred to in the Record on page 48 thereof, certified by me on the 9th day of December, A. D. 1914.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at Springfield, this 12th day of January, A. D. 1915.

[SEAL.]

J. H. DRENNAN, *Clerk.*

* * * * *

103 Before the Interstate Commerce Commission.

Docket No. 4762.

POEHLMAN BROS. COMPANY, Complainant,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Defendant.

CHICAGO, ILL., June 14, 1912—3:30 P. M.

Before A. B. Pugh, Special Examiner.

Met pursuant to notice.

Appearances:

M. F. Gallagher (1406 Tribune Bldg., Chicago, Ill.) Appearing for the complainant.

O. W. Dynes, (1335 Railway Exchange Bldg.) Chicago, Ill., appearing for the Chicago, Milwaukee & St. Paul Railway Company.

* * * * *

Examiner Pugh: The case of Poehlman Bros. Company vs. Chicago, Milwaukee & St. Paul Railway Company, Docket No. 4762, has been set for hearing by the Interstate Commerce Commission at this time and place. Who appears for the complainant?

Mr. Gallagher: M. F. Gallagher.

Examiner Pugh: Who appears for the defendant?

Mr. Dynes: O. W. Dynes and W. E. Prendergast, of the Traffic Department.

Examiner Pugh: This petition involves the question of switching charges at forty cents per ton on coal in carloads from Galewood station, Chicago, to Morton Grove. The complainant alleges that the rate involves unjust discrimination against it, and charges a violation of sections two and three; also that the rate of forty cents per ton is in violation of section one and is unjust and unreasonable; that is about what is in the case.

Mr. Gallagher: The two points involved, Galewood and Morton Grove are two stations in Cook county. The distance is about 12 miles.

Examiner Pugh: You may proceed with the evidence in your case.

Mr. Gallagher: Mr. Poehlman will take the stand, please.

A. F. POEHLMAN was called as a witness, and having been duly sworn testified as follows:

Direct examination:

Mr. Gallagher: Your name is August Poehlman?

Mr. Poehlman: Yes, sir.

Mr. Gallagher: You are Secretary-Treasurer of the Poehlman Bros. Company?

105 Mr. Poehlman: Yes, sir.

Mr. Gallagher: What is the business of that company?

Mr. Poehlman: We are in the wholesale florist business.

Examiner Pugh: It is a corporation?

Mr. Poehlman: It is a corporation, yes sir.

Examiner Pugh: Where does it do business?

Mr. Poehlman: Morton Grove and Chicago.

Mr. Gallagher: Where are your greenhouses located?

Mr. Poehlman: Morton Grove.

Mr. Gallagher: Where is your sales office?

Mr. Poehlman: Our sales office is at Chicago, 72 Randolph street now, at the present time.

Mr. Gallagher: What is the amount of your investment at Morton Grove in these greenhouses?

Mr. Poehlman: Approximately \$750,000 to \$800,000.

Mr. Gallagher: How many tons of coal do you consume annually?

Mr. Poehlman: Approximately 30,000 tons.

Mr. Gallagher: Where does this coal come from?

Mr. Poehlman: About two-thirds of it originates in West Virginia and other eastern points.

Mr. Gallagher: How long have you been located at Morton Grove?

Mr. Poehlman: Twenty-two years.

Mr. Gallagher: You produce all kinds of flowers, is that your business?

Mr. Poehlman: We specialize on certain things, certain flowers. We don't grow all kinds of flowers.

Mr. Gallagher: Give us an idea of your business now?

Mr. Poehlman: We grow principally roses, carnations and chrysanthemums.

Mr. Gallagher: Where do you sell those flowers?

Mr. Poehlman: They are sold through our sales store at 72 Randolph street.

106 Mr. Gallagher: Now, what I want to get at is the competition you are up against in the sale of your product. Where are your competitors, here in Chicago?

Mr. Poehlman: We have very strong competition in our line. There are perhaps one hundred different growers within a radius of 25 miles of Chicago, 20 to 25 miles of Chicago and we are all competing in the same market.

Mr. Gallagher: You all ship into the Chicago market?

Mr. Poehlman: Our product in nearly all cases goes to the Chicago market.

Mr. Gallagher: What part of your expense of operation is fuel?

Mr. Poehlman: About thirty per cent.

Mr. Gallagher: Do you have a private siding into your plant and greenhouses?

Mr. Poehlman: We have two sidetracks, but we also use a steam track.

Mr. Gallagher: The same charge is made on all coal that moves to you at Morton Grove?

Mr. Poehlman: Yes sir.

Mr. Gallagher: I would like to offer at this point the paid expense bill covering the shipment mentioned in the complaint. Do you want to see that, Mr. Dynes?

Mr. Dynes: It is paid by this complainant?

Mr. Gallagher: I will show that in a minute.

(The paper so offered and identified, was received in evidence and thereupon marked "Complainant's Exhibit No. 1, Witness Poehlman, received in evidence June 14, 1912," and is attached hereto.)

Mr. Gallagher: The paid expense bill offered in evidence shows car No. 51,979 soft coal, weight 99,200 pounds, rate 2, charges \$19.84. Who paid those freight charges to the Chicago, Milwaukee & St. Paul, of \$19.84 on this car?

Mr. Poehlman: Poehlman Brothers Company.

107 Mr. Gallagher: What is your custom in buying coal, do you buy it f. o. b. the point of origin?

Mr. Poehlman: We do sometimes. Sometimes we get a price

made us f. o. b. mines; sometimes f. o. b. Chicago and sometimes f. o. b. Morton Grove.

Examiner Pugh: What does that rate 2 mean there, two cents per hundred pounds, 40 cents a ton?

Mr. Gallagher: Yes, forty cents a ton. In order to show how these cars run, the revenue per car, I wish to introduce a half dozen of these paid expense bills.

Examiner Pugh: Not as a basis for reparation in this case, but simply in proof of your charge.

Mr. Gallagher: Yes, that the rates for the future should be reduced.

Examiner Pugh: Yes.

Mr. Gallagher: In our complaint, Mr. Examiner, we asked for reparation on all shipments for a period of two years prior to the filing of the complaint.

Examiner Pugh: But not to be proved at this hearing as I understand.

Mr. Gallagher: No, we state in our petition that all of the transactions are precisely alike, precisely like the one we set forth in our complaint.

Examiner Pugh: But in your prayer for relief I see you ask reparation in the sum of \$14.88 with interest to be awarded to the complainant in this case on the shipment specifically described.

Mr. Gallagher: Yes.

Examiner Pugh: The proof of further reparation afterwards, if the Commission awards reparation, can be submitted after their decision and the case held open if necessary.

Mr. Gallagher: I specifically pray there that as to all shipments within two years that we be awarded reparation, that is in the petition.

Mr. Gallagher: What portion of that coal would you say you buy f. o. b. Morton Grove?

Mr. Poehlman: I couldn't state that. I never made a division, so I don't know.

Mr. Gallagher: Would you say it is a very small proportion?

Mr. Poehlman: As compared with the whole it might be considered a small proportion.

Mr. Gallagher: Will you state, Mr. Poehlman, where your main competitors owning greenhouses and selling in the same market as against you here in Cook County are located?

Mr. Poehlman: There are a dozen located at Park Ridge; and a lot of them located at Maywood, perhaps another dozen; and there are about that—I don't know, there are so many now, new ones springing up lately; I know about six or eight at Des Plaines, and others at Elmhurst, Illinois, and there are quite a number of them situated around on the Northwestern at Greenwood station, there are several. Reinberg Brothers, Peter and George Reinberg at Rosehill.

109 Mr. Gallagher: Rosehill Station, Cook County?

Mr. Poehlman: Cook county, yes sir. Wietor Brothers at

Rogers Park and about a dozen others around there that I cannot recall just now by name.

Mr. Gallagher: Any at Summerdale?

Mr. Poehlman: Reinberg is at what used to be called Summerdale Station; it is now Rosehill, I believe.

Mr. Gallagher: Any at Edgewater?

Mr. Poehlman: I don't know of any at Edgewater.

Mr. Gallagher: Oak Park?

Mr. Poehlman: Yes, there are a number of them there.

Mr. Gallagher: Now, all these greenhouses, send their product into the same market in Chicago as you do, is that the situation?

Mr. Poehlman: Yes, sir.

Mr. Gallagher: Is the competition keen in the sale of flowers in this market or otherwise?

Mr. Poehlman: The competition is very keen.

Mr. Gallagher: Is it growing or lessening?

Mr. Poehlman: It is growing very rapidly.

Mr. Gallagher: To what extent then, is the freight charges on your fuel an item in transacting your business? Is it an important item or an unimportant item?

Mr. Poehlman: It is a very important item of expense to us.

Mr. Gallagher: In a general way, Mr. Poehlman, do you know what these competitors of yours are getting in the way of deliveries of coal? The charges they pay plus the Chicago rate? You pay forth cents plus the Chicago rate, is that the situation?

Mr. Poehlman: Yes, sir.

Mr. Gallagher: On all coal?

Mr. Poehlman: On all except some Illinois coal, I believe, on which there is an absorption of ten cents a ton.

Mr. Gallagher: Take this West Virginia coal which you say is about 75 per cent of your fuel. As I understand that you pay forty cents in addition to the Chicago rate, is that right?

Mr. Poehlman: I do.

Mr. Gallagher: On all of that coal.

Mr. Poehlman: On all of that coal, on all eastern coal.

Mr. Gallagher: What do your competitors get?

Mr. Poehlman: I understand that Des Plaines has the Chicago delivery rate which is 40 cents less than ours. Park Ridge likewise; Greenwood avenue, which is west of Evanston has a free delivery; the florists there are getting that.

Examiner Pugh: Is this defendant company involved in all these deliveries?

Mr. Poehlman: No.

112 Mr. Gallagher: Where is your coal transferred to the defendant, the Chicago, Milwaukee & St. Paul?

Mr. Poehlman: At Galewood.

Mr. Gallagher: The Chicago rate governs the movement up as far as the Galewood station?

Mr. Poehlman: It does.

113 Mr. Gallagher: And the forty cents a ton you pay is from Galewood Station to Morton Grove, is that right?

Mr. Poehlmann: Yes.

Mr. Gallagher: What is the distance?

Mr. Poehlman: About 12 miles.

Mr. Gallagher: Does that come out to you in a through train, or does it come out to you by special engine just for your service?

Mr. Poehlman: No, I think the coal comes in a local train.

Mr. Gallagher: That passes farther north?

Mr. Poehlman: Farther north, yes.

Mr. Gallagher: And your coal is placed out at your siding at Morton Grove?

Mr. Poehlman: Yes, at our siding, and some of it on the business track, that is the railroad business track. Most of it is put on our siding.

Mr. Gallagher: Just one more question: You are bringing a complaint here, Mr. Poehlman, on the ground that this charge for this movement is excessive. How important a factor is the switching charge of forty cents a ton in the expenses of your business?

Mr. Poehlman: Well, it practically means that we are paying \$12,000 a year more for freight, figuring on the basis that our competitors at this place would use an equal amount of coal per year. I say approximately \$12,000; it depends upon the quantity that is used. The amount of coal that is used varies according to the weather, according to the winter.

Mr. Gallagher: What other freight do you get there in any considerable quantity?

114 Mr. Poehlman: We have a lot of manure.

Mr. Gallagher: Where does your manure come from, the stock yards?

Mr. Poehlman: Comes from the stock yards, some of it, and other is loaded along the Pan Handle somewhere, I believe; I don't know just exactly where it is, at Union street or Green street. I don't know just exactly where it is loaded.

Mr. Gallagher: About how many cars a day do you get of that, or how does it average?

Mr. Poehlman: We get about 450 to 500 carloads of that a year.

Mr. Gallagher: The same rate applies on manure as coal?

Mr. Poehlman: Yes, except that we have to pay two and a half cents a hundred pounds on manure from the stock yards.

Mr. Gallagher: I think that is all.

Examiner Pugh: Are the various points where complainant's competitors are located indicated on that map?

Mr. Gallagher: I have drawn up a special map to show that when I get another witness on the stand.

Examiner Pugh: Very well. Cross examine.

Cross-examination:

Mr. Dynes: One of your competitors that you spoke of is located in Elmhurst. What was the name of that one?

Mr. Poehlman: Mr. Windlind & Kimmel.

Mr. Dynes: That is not in the same county that Chicago is in, is it? Elmhurst is in Dupage County, is it not?

Mr. Poehlman: I don't know, I am sure.

Mr. Gallagher: Do you know what the distance is from Morton Grove to the station on the St. Paul line in the city, what its railroad distance is from its principal station in the city of Chicago out to Morton Grove?

Mr. Poehlman: From the union depot?

115 Mr. Dynes: Yes.

Mr. Poehlman: About 14.3 miles, I guess, as near as I can remember.

Mr. Dynes: Now, it is true that Morton Grove is located north of and outside of the switching district as it is represented on this map which you introduced in evidence?

Mr. Poehlman: Yes.

Mr. Dynes: Of any road?

Mr. Poehlman: Yes, that is true.

Mr. Dynes: And about 14 miles from the union station of the road that serves you?

Mr. Gallagher: I think that is immaterial; if the movement is from Galewood how far it is from the union station.

Mr. Dynes: And about 12 miles from the point where the coal is transferred to the road that serves you, is it?

Mr. Poehlman: Yes sir, that is my recollection.

Mr. Dynes: Your grievance is in that the switching district did not extend two miles further in your direction, is it not?

Mr. Poehlman: No sir, it is not. I am not interested in the switching district; I am interested in the rate.

Mr. Dynes: Then you do not claim that the coal should be switched up to your place?

Mr. Poehlman: No, I don't make that claim at this time.

Mr. Dynes: You question the reasonableness of the rate as a traffic proposition in and of itself, do you?

Mr. Poehlman: Yes, sir.

Mr. Dynes: And this coal is brought to you in regular course of transportation, not by a switch engine, but in a regular way freight traveling under orders, running along the line of the company's road?

116 Mr. Poehlman: I am not positive about that. Sometimes we have a great deal of freight coming in and they may take a whole train-load out. We have had almost train-loads of coal come out at one time. I don't know whether you would call that being handled by a local train or a switch train. I don't think that they ever come out specially to serve us with coal. In my opinion I would say that the coal is handled by a regular local train crew.

Mr. Dynes: Traveling along the line of the company?

Mr. Poehlman: Traveling along the line and spotting the cars wherever they are required.

Mr. Dynes: How large a service track have you there?

Mr. Poehlman: For our use?

Mr. Dynes: Yes, how many coal cars can be placed?

Mr. Poehlman: I think we could spot about 35 or 40 cars on our tracks at least.

Mr. Dynes: And unload them without moving them?

Mr. Poehlman: No, not altogether.

Mr. Dynes: You mean you have got car room for that many cars?

Mr. Poehlman: We have unloading places. We have sheds that we have to unload this coal into and we have manure pits that we unload manure into and the cars have to be spotted occasionally to reach those points, to reach those particular unloading spots.

Mr. Dynes: What is the distance from the Union Stockyards where the manure is loaded out to your plant?

Mr. Poehlman: I am not familiar with that distance?

Mr. Dynes: You are not complaining of the rates on manure in this particular complaint, are you?

Mr. Poehlman: In my judgment the rate is high, too high.
117 Examiner Pugh: But the complaint involves rates on coal only?

Mr. Poehlman: Coal only.

Mr. Gallagher: That is true, but we do not want to appear here as acquiescing to the rate on manure.

Examiner Pugh: Of course, not.

Mr. Dynes: What is the size and acreage of your plant?

Mr. Poehlman: We have about 35 or 37 acres covered with glass and buildings.

Mr. Dynes: Do you handle shrubs as well as flowers?

Mr. Poehlman: No, sir.

Mr. Dynes: No nursery business?

Mr. Poehlman: No, sir.

Mr. Dynes: Do you supply any market other than Chicago and suburbs?

Mr. Poehlman: What is that question?

Mr. Dynes: Do you supply any market other than the Chicago market for cut flowers?

Mr. Poehlman: We consign from our store to outside points, Chicago is our distributing point.

Mr. Dynes: How far out do you reach?

Mr. Poehlman: We reach down into Texas and Louisiana.

Mr. Dynes: You sell other flowers than cut flowers, do you?

Mr. Poehlman: No sir—plants, we sell plants.

Mr. Dynes: Do you deal in seeds?

Mr. Poehlman: No, sir.

Mr. Dynes: That is all.

Mr. Gallagher: Just a word about the nature of your complaint. Mr. Dynes asked you for the exact nature of your complaint. Let's see if I understand your answer. You are complaining on the ground that the charge for this service of the Chicago, Milwaukee & St. Paul from Galewood to Morton Grove is too high?
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Mr. Poehlman: Yes, sir, I do.

Mr. Gallagher: And is discriminatory against you?

Mr. Poehlman: It is.

Mr. Gallagher: How far the switching limits may enter into the determination of that question is not a matter that you are interested in?

Mr. Poehlman: It does not concern me.

Mr. Gallagher: You will leave that to the Commission to determine, isn't that the idea?

Mr. Poehlman: Yes sir.

Mr. Gallagher: That is all.

Examiner Pugh: Stand aside.

(Witness excused.)

JOHN P. DRENNAN was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Gallagher: What is your name, please?

Mr. Drennan: John P. Drennan.

Mr. Gallagher: Have you examined the tariffs in connection with switching charges on coal in and around Chicago for the purpose of appearing here and testifying?

Mr. Drennan: Yes, sir.

Mr. Gallagher: Now, on what basis is coal delivered, eastern coal and Indiana and Illinois coal to Des Plaines in Cook county? In other words, is it delivered on the Chicago basis or something plus the Chicago rate?

Mr. Dynes: I do not think that is material, because that is not on the line of this defendant.

Examiner Pugh: Let that objection be noted.

Mr. Gallagher: I think it is material.

Mr. Drennan: Do you want to Chicago?

119 Mr. Gallagher: No, just want to know on what basis is it delivered to Des Plaines, on the Chicago basis, is it?

Mr. Drennan: On eastern coal it is.

Mr. Gallagher: How about Indiana and Illinois coal?

Mr. Drennan: Coal from Illinois is also.

Mr. Gallagher: How about Park Ridge in Cook county?

Mr. Drennan: The Chicago rate applies.

Mr. Gallagher: Norwood park?

Mr. Drennan: The Chicago rate applies.

Mr. Gallagher: Take the charges of the Chicago, Milwaukee & St. Paul. Describe the movement from Galewood to Edgewater, Buena Park and North Edgewater. Will you briefly describe and point out that movement? If the Examiner will permit me I will withdraw Mr. Drennan and call Mr. Harris. I think he is more familiar with this situation.

W. H. HARRIS was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Gallagher: What is your name, please?

Mr. Harris: W. H. Harris.

Mr. Gallagher: What is that switching movement from Galewood to Buena Park, what is the distance?

Mr. Harris: The movement would be from Galewood by way of Pacific Junction and across to Clybourne Junction and then up on this Evanston branch of the St. Paul to Edgewater, which would be a distance of about 11½ miles.

Mr. Gallagher: What is the charge for moving coal by the St. Paul road?

Mr. Harris: The delivery would be made at Galewood and 120 the movement would be from Galewood to Edgewater, and the switching charge is 30 cents per ton with an absorption by the original road.

Mr. Gallagher: Of how much?

Mr. Harris: Of \$4 per car of 30 tons, and 10 cents excess over 30 tons.

Mr. Gallagher: In making that movement on coal, does that go through the Division Street Yards?

Mr. Harris: I believe it does. It would be necessary for it to go through the Division Street Yards, coming over the Bloomingdale Avenue road.

Mr. Gallagher: A very congested part of Chicago?

Mr. Harris: A very congested part of Chicago, go right through the heart of the city practically and then on up.

Mr. Gallagher: The consumers at those stations then pay 20 cents a ton?

Mr. Harris: That would be according to their tariffs. The St. Paul is 30 cents a ton with an absorption by the eastern road of \$4 a car.

Mr. Gallagher: Then they pay in addition to the Chicago rate 20 cents a ton?

Mr. Harris: Twenty cents a ton plus excess over 30 tons.

Mr. Gallagher: On coal.

Mr. Harris: On coal.

Examiner Pugh: Have you the tariff authorities?

Mr. Harris: Yes.

Examiner Pugh: Just refer to the tariffs showing that.

Mr. Gallagher: Refer to the tariffs showing that, please.

Mr. Harris: At Edgewater that would be 30 cents and that would be referred to tariff I. C. C. No. B-2506.

Examiner Pugh: St. Paul tariff?

121 Mr. Harris: St. Paul tariff. And Lake Shore Tariff, showing the absorption *on* one instance, would be I. C. C. No. A-2802, on delivery to the C., M. & St. P. Railroad, deliveries as shown below in group B will absorb the actual switching charge of the C., M. & St. P. Railway in accordance with the tariff of the C.,

M. & St. P. Railway as shown on page 3, but not to exceed \$4 per car except when the delivery is made by the Union Stockyards—

Examiner Pugh: You need not repeat all that, but just give the reference.

Mr. Gallagher: Does that apply to the stations to which I have questioned you about?

Mr. Harris: Yes, Edgewater, Buena Park and Argyle.

Mr. Gallagher: Has that rate recently been advanced.

Mr. Harris: As far as I know it has been advanced. I think the old tariffs will show that. This tariff is effective May 1, 1912.

Mr. Gallagher: Prior to that time the rate was 20 cents was it?

Mr. Harris: As far as I know.

Mr. Gallagher: The charge was 20 cents?

Mr. Harris: The charge was 20 cents.

Mr. Gallagher: Have you a tariff showing that, Mr. Drennan? You will admit that, will you, Mr. Prendergast?

Mr. Prendergast: Twenty cents.

Mr. Gallagher: We can agree to that then.

Mr. Prendergast: On Edgewater, you mean?

Mr. Gallagher: Yes.

Mr. Prendergast: I haven't the reference, but that is correct. It has been advanced in the last couple of months.

122 Mr. Gallagher: In the last couple of months you advanced it from 20 cents to 30 cents?

Mr. Prendergast: Yes.

Mr. Gallagher: Prior to that this rate of 20 cents had been in effect for quite a period of time?

Mr. Prendergast: Yes.

Mr. Gallagher: What is the rate from Chicago to Milwaukee by the defendant carrier on coke?

Mr. Harris: From their tariffs it is a 45-cent rate.

Mr. Gallagher: What is the distance?

Mr. Harris: About 85 miles, I believe.

Mr. Gallagher: Refer to that tariff.

Mr. Drennan: I. C. C. No. B-1962.

Mr. Gallagher: Page?

Mr. Drennan: Page 18, index No. 1.

Mr. Prendergast: Is that a straight rate or proportional?

Mr. Drennan: Straight.

Mr. Gallagher: Have you looked up to see what proportion the rate on coke as a rule bears to the rate on bituminous and anthracite coal?

Mr. Harris: We have.

Mr. Gallagher: What do you find on that?

Mr. Harris: There is a rate of 60 cents a ton from Chicago to Milwaukee on bituminous coal.

Mr. Gallagher: Have you examined these rates to Winona, La Crosse and Madison?

Mr. Harris: I have not.

Mr. Drennan: I have.

Mr. Gallagher: Give those rates. The purpose of this question

is to show that the rate on coke is universally higher than the rate on coal; and that the rate on coke to Milwaukee is 45 cents, 123 a distance of 85 miles and a charge here of forty cents for a movement of 12 miles on coal. Give the tariff showing that.

Examiner Pugh: You have two witnesses on the stand at the same time, but go ahead.

Mr. Gallagher: I am trying to shorten it.

Mr. Drennan: Will you give me the points. There are a couple of Northwestern points on that list I believe.

Mr. Harris: The rate to Winona via the defendant's line is \$1.35.

Mr. Gallagher: The rate on what?

Mr. Harris: Bituminous coal.

Mr. Gallagher: What is the rate on coke.

Mr. Harris: The rate on coke is \$1.60 to the same point.

Mr. Gallagher: Give the tariff?

Mr. Drennan: I. C. C. B-1962.

Mr. Gallagher: Here are these rates. Just read these rates into the record.

Examiner Pugh: Can't you just hand in that slip and let that be introduced as an exhibit?

Mr. Gallagher: No, there are a number of memoranda on there.

Mr. Harris: We could tear that off.

Examiner Pugh: If it is short read it into the record.

Mr. Gallagher: Have you examined the rates on coke and the rates on soft coal by the defendant carrier for the purpose of comparing those rates?

Mr. Harris: I have.

Mr. Gallagher: What is the result of that comparison?

Mr. Harris: Why, I find that on coke against bituminous coal there is a difference of about 25 cents a ton higher rate on coke.

124 Mr. Gallagher: Than on bituminous coal?

Mr. Harris: Than on bituminous coal, yes. Now, you wish me to read off these points and the rates?

Mr. Gallagher: No, that is enough. Have you looked up the rate to Mineral Point, Wisconsin, from Chicago, on the line of the defendant carrier?

Mr. Drennan: Yes, sir.

Mr. Gallagher: On coal screenings?

Mr. Harris: We have looked that up and we find the rate on coal to Mineral Point is 60 cents, on soft coal, screenings and dust.

Mr. Gallagher: A distance of over 200 miles?

Mr. Harris: It is a distance of 190½ miles, I believe, by the mileage from the time tables.

Mr. Gallagher: Refer to the tariff on that.

Mr. Drennan: B-1962.

Mr. Harris: What page?

Mr. Drennan: 113.

Mr. Gallagher: What item?

Mr. Drennan: Item No. 72.

Examiner Pugh: What is the I. C. C. number?

Mr. Drennan: I gave that; I. C. C. B-1962.

Mr. Gallagher: Will you take now the tariff of the Belt Railway in Cook County, and show the charges for moving cars of coal?

Mr. Harris: As I understand it, you want to show the movement of coal from an industry on the Belt to an industry on the Belt, and the charge that is made for that movement?

Mr. Gallagher: Yes, what are the charges of the Belt for moving coal in Cook County?

Mr. Dynes: I object to that; that is seeking to compare a switching rate with a line haul. It is entirely an unfair comparison of the switching rates within a switching district, to compare those rates with a line haul.

Examiner Pugh: The objection is in the record. Proceed.

Mr. Gallagher: It is a question of words, I think, in this case.

Examiner Pugh: Proceed.

Mr. Harris: Coal that would be loaded at the Lehigh Valley Coal Company docks say, at South Chicago, and shipped to a consignee at West 46th street, on the Belt line, a distance of about 18 miles they make a charge of 15 cents per ton. They would consider that from industry to industry on their line. That would be found by referring to I. C. C. No. 18, item No. 9.

Mr. Gallagher: Is that whole movement in Cook County?

Mr. Harris: That whole movement is in Cook County. That was a minimum of 80,000 pounds to the car on which that charge of 15 cents per ton is made.

Take another example of the same movement of Philadelphia Reading Coal & Iron Company coal they have a dock at South Chicago at 95th street and the river, and the Belt Railroad Company would make a movement to their yards located at West 46th street or West Chicago avenue, which is a distance of about 20 miles. They make that movement for 15 cents a ton. The same charge as in the other case. Refer to I. C. C. Tariff No. 18, item No. 9.

Mr. Gallagher: Any other cases there that you have got?

Mr. Harris: Well, that applies to connecting lines to industries on the Belt where the movement would be made from Pullman Junction, as for instance a movement was made say from a line like the Erie Railroad which would be delivered to the Belt at Pullman Junction and hauled to West 46th street or West Chicago Avenue and the Belt make that movement of about 15 miles I should judge at ten cents a ton.

Mr. Gallagher: Are these isolated cases or a great number of cases?

Mr. Harris: The majority, the great number of cases.

Mr. Gallagher: Are of that kind?

Mr. Harris: Yes, a great number.

Mr. Gallagher: Are there any stations on the Chicago, Milwaukee & St. Paul Railway, their terminals in Chicago or Cook County, that receive deliveries of coal on the Chicago basis?

Mr. Harris: As I understand it, Mayfair Station would receive coal on the Chicago basis for a minimum weight of 60,000 pounds and ten cents per ton excess over that.

Mr. Gallagher: How about Franklin Park, Fullerton avenue station, Belmont Avenue station, Addison Street Station?

Mr. Dynes: Let us get one of those at a time. What about Franklin Park?

Mr. Harris: Franklin Park, I am not familiar with that point. Where is that point?

Mr. Gallagher: Look it up, Mr. Harris, in the tariff.

Mr. Harris: At Franklin Park there would be a switch. What is the St. Paul switching charge on that? Franklin Park is the other side of Galewood, I believe.

Mr. Dynes: About five miles west of Galewood.

Mr. Harris: About five miles west of Galewood, yes. That tariff reads 35 cents a ton and a minimum of 40,000 pounds. That delivery is not made on the Chicago rate. There is an absorption there on that 35 cents by the eastern line, I take it, from this other tariff of the Lake Shore.

Mr. Gallagher: Of how much?

Mr. Harris: At Franklin Park, \$4 a car.

Mr. Gallagher: Leaving then what, that the consumers have to pay at that point in addition to the Chicago rate?

Mr. Harris: I don't quite catch that.

Mr. Gallagher: What do the consumers pay at Franklin Park in addition to the Chicago rate for coal?

Mr. Harris: They would pay 35 cents a ton plus the Chicago rate, less \$4 a car which would be absorbed by the delivering line.

Mr. Gallagher: Take Fullerton Avenue station. Is that station on the Chicago, Milwaukee & St. Paul in Chicago?

Mr. Harris: Fullerton Avenue?

Mr. Gallagher: Yes.

Mr. Harris: It is.

Mr. Dynes: What is the rate?

Mr. Harris: I believe it takes the Chicago rate.

Mr. Gallagher: Look it up. Get it accurate or it is no account.

Mr. Drennan: Fullerton avenue, Chicago rate.

Mr. Harris: Where is it on the St. Paul?

Mr. Dynes: Is there any such station? Isn't that merely switching territory?

Mr. Harris: That is considered switching territory. I believe the Chicago rate applies there.

Mr. Gallagher: What is the distance from Galewood to that station?

Mr. Harris: I haven't got the distance on that point.

128 Mr. Dynes: About six and a half miles.

Mr. Gallagher: Six and a half miles. Take Belmont avenue station.

Mr. Harris: That is practically the same as Fullerton avenue.

Mr. Gallagher: Chicago basis applies on deliveries of soft coal?

Mr. Harris: Chicago basis apply on a minimum of 60,000 pounds excess ten cents a ton over that.

Mr. Gallagher: Addison street station?

Mr. Harris: The same thing.

Mr. Gallagher: Grayland?

Mr. Harris: Grayland would be the same thing.

Mr. Dynes: Where is Grayland?

Mr. Harris: It is just the other side of Pacific Junction.

Mr. Gallagher: Now, refer to the tariffs showing these stations you have just been referring to and the switching charges and the absorptions.

Mr. Brennan: Lake Shore Tariff I. C. C. No. A-2802. That rate that applies to Franklin Park of 35 cents, as was stated, there is, I see, a switching rate of 20 cents there.

Mr. Gallagher: Franklin Park?

Mr. Drennan: Yes.

Mr. Gallagher: That is an absorption of \$4 a car?

Mr. Harris: Yes.

Mr. Dynes: On what line?

129 Mr. Drennan: St. Paul.

Mr. Gallagher: Give the tariff number showing that.

Mr. Drennan: I. C. C. No. B-2435 showing a switching rate of one cent per hundred pounds.

Mr. Harris: St. Paul.

Mr. Dynes: Is that the defendant company's tariff?

Mr. Harris: Yes.

Mr. Gallagher: What page?

Mr. Drennan: Page 14.

Mr. Gallagher: What item?

Mr. Drennan: Item No. 5.

Mr. Gallagher: Does this tariff to which you have just referred give all of the switching charges of the defendant carrier in Cook county?

Mr. Drennan: Not all in Cook county.

Mr. Gallagher: What other tariff of the defendant carrier—

Mr. Drennan: Their regular freight tariff.

Mr. Gallagher: Give the reference.

Mr. Drennan: C. M. & St. P. I. C. C. No. B-2506.

130 Mr. Gallagher: What is the charge for moving coal from Galewood on the defendant carrier's line to Buena Park Station on the defendant carrier?

Mr. Drennan: 20 cents a ton.

Mr. Gallagher: What is that distance?

Mr. Harris: About nine and a half miles I should judge.

Mr. Gallagher: Is that near Edgewater?

Mr. Harris: That is about a mile and a half south of Edgewater, nearer to Galewood.

Mr. Gallagher: What is the absorption there?

Mr. Harris: \$4 a car.

Mr. Gallagher: So that consumers of coal at Buena Park pay

about ten cents a ton in addition to the Chicago rate, is that the situation?

Mr. Harris: That is the situation.

Mr. Gallagher: Where are Butler Brothers located, on the Chicago, Milwaukee & St. Paul?

Mr. Harris: Butler Brothers are located on the Randolph Street bridge, on the Chicago, Milwaukee & St. Paul.

Mr. Gallagher: Is coal moved over there from Galewood Station?

Mr. Harris: As I understand it is moves by way of Galewood Station, yes, sir.

Mr. Gallagher: What is the charge?

Mr. Harris: The Chicago rate would apply for 60,000 pounds plus excess of ten cents a ton.

Mr. Gallagher: Refer to the tariff showing that?

Mr. Harris: That would be considered Union Street, inn't ot, or Union Station? Which is it?

131 Mr. Drennan: Union Street, Butler Brother, it is way-billed Union Street, I. C. C. No. 2435.

Have you any other rates there you want to put in, Harris? The rate to Maywood, what is that?

Mr. Harris: The rate to Maywood would be on the Northwestern, wouldn't it?

Mr. Gallagher: There are a number of competitors of the complainant located at Maywood. Now, on what basis do they get coal?

Mr. Dynes: It is on the Northwestern and on the Great Western, on the Belt and on the Wisconsin Central of Soo Line; but it is not on the Chicago Milwaukee & St. Paul Line.

Mr. Harris: For delivery that would be made on eastern coal they deliver at Maywood at the Chicago rate. That is by the Lake Shore Line.

132 Mr. Gallagher: Show the tariff for that?

Mr. Harris: Lake Shore Tariff I. C. C. No. A2802.

Mr. Gallagher: Is the same true as to Oak Park?

Mr. Harris: Oak Park the same, Chicago rate applies and the same tariff.

Mr. Gallagher: You have given Des Plaines as being on the Chicago basis, have you?

Mr. Harris: There is Des Plaines, Greenwood Avenue, Edison Park, Norwood Park, Oak Park, Maplewood, Jefferson Park, Park Ridge, Peterson Avenue, Chicago, Proviso, Ravenswood, River Forest, Weber.

Mr. Gallagher: Now, as I understand your evidence at these points the consumers of coal receive deliveries on the basis of the rates to Chicago.

Mr. Harris: Yes, both on eastern and western coal. There is a C., B & Q. rate. I shall refer to their tariff.

Mr. Gallagher: Yes, give **their tariff**.

Mr. Harris: That would be C., B. & Q. Tariff G. F. O. No. 6407-D. This tariff shows where they make through rates to these points.

Mr. Gallagher: Give the page and item.

Mr. Harris: It would be page 6 and to the points I mentioned there it would run from item 29 to item 46.

Mr. Gallagher: Of what tariff?

Mr. Harris: Of the C., B. & Q. tariff, the number which I just gave.

Mr. Gallagher: Where is the Mark Manufacturing Company located?

133 Mr. Harris: At Greenwood Avenue just this side of Evanston. It is in Evanston, Greenwood is on the southern boundary of Evanston on the Northwestern.

Mr. Gallagher: On what basis is coal delivered to Greenwood?

Mr. Harris: On the Chicago basis, Greenwood Avenue Station.

Mr. Gallagher: That is via the Northwestern.

Mr. Harris: That is via the Northwestern, Chicago & Northwestern.

Mr. Gallagher: How far north does this 40 cent rate extend beyond Morton Grove?

Mr. Harris: It extends to a point about five miles, a place called Shermerville, I believe.

Mr. Dynes: On the Milwaukee Line?

Mr. Harris: On the Milwaukee line, the third station beyond Morton Grove.

134 Cross-examination:

Mr. Dynes: I would like to ask the witness if he understands the meaning of the reciprocal switching rates or tariffs that are applied by the railroads themselves from switching districts in Chicago and vicinity?

Mr. Harris: That is, if I understand the meaning of the word reciprocal?

Mr. Dynes: Yes.

Mr. Harris: I do, yes sir.

135 Mr. Dynes: What is the meaning of reciprocal as used there?

Mr. Harris: I would take it that the two roads have a joint agreement as a basis of switching back and forth.

Mr. Dynes: And on that reciprocal basis it is a case of trading one accommodation for another accommodation?

Mr. Harris: That is what I would say, yes.

Mr. Dynes: And the money consideration is not the only consideration that passes between the roads in that connection?

Mr. Harris: That I couldn't say, but I would take it for granted that it would be such.

Mr. Dynes: It contemplates not only this one service on the line and rails of one road, but a similar service on the rails of the other road when the second road may require such, does it not?

Mr. Harris: That is what I would consider it.

Mr. Dynes: Loading facilities, road-bed, and all that goes to make up railroad transportation?

Mr. Harris: Yes.

Mr. Dynes: And that is a different switching rate than the inter-industry rate, is it not? Or inter-plant transportation?

Mr. Harris: I would consider it such.

Mr. Dynes: And it is a lower rate, is it not?

Mr. Harris: That I couldn't say. This reciprocal arrangement of two roads; would there be any rates published on that, if two roads have the reciprocal arrangement or reciprocal rates?

136 Mr. Dynes: Do you know what you have been comparing reciprocal switching with line hauls in some of these comparisons that you have made? Reciprocal switching charges with line haul charges?

Mr. Drennan: I didn't know it, no sir.

137 Mr. Dynes: The rate that the Belt Line charges in a congested center such as the Belt Lines serve is usually lower than the rate that a line traveling through the country and serving a vast territory charges, is it not?

Mr. Drennan: Yes, sir.

Mr. Dynes: The one is organized just for that little service within that congested district, and the other has to take care of an equipment for serving a broad country?

Mr. Drennan: Yes.

Mr. Dynes: This coal dust that you spoke of being shipped up to some point in Wisconsin——

Mr. Drennan: Yes.

Mr. Gallagher: Mineral Point.

Mr. Dynes: Mineral Point in Wisconsin, is not a commodity used as a fuel but as a flux in a smelter, is it not?

Mr. Drennan: I could not tell you that.

Mr. Dynes: You don't know that it is used as a fuel?

Mr. Gallagher: I object, because the Commission has many times ruled that the use of a commodity is not material as affecting a rate.

Examiner Pugh: The objection is in the record.

138 WILLIAM E. PRENDERGAST was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Dynes: State your name.

Mr. Prendergast: William E. Prendergast.

Mr. Dynes: And your connection with the Chicago, Milwaukee & St. Paul?

Mr. Prendergast: Assistant General Freight Agent, Chicago.

Mr. Dynes: How long have you been in the traffic business with railroads?

Mr. Prendergast: About 28 years, from the beginning.

139 Mr. Dynes: You heard these three witnesses testify, did you?

Mr. Prendergast: Yes, sir.

Mr. Dynes: Are you familiar with the character of the district through which and in which the tracks of the Chicago, Milwaukee & St. Paul Railway Company line that are involved in serving the

plant of the complainant at Morton Grove with the coal shipments in question run?

Mr. Prendergast: Yes, sir.

Mr. Dynes: What is the nature of that district in respect to whether it is terminal property in particular or in general, what is the nature of it?

Mr. Prendergast: The coal is handled through the most expensive terminal we have to begin with, and then it is handled over the heaviest tonnage division we have.

Mr. Dynes: And a part of it is in the Chicago terminal is it?

Mr. Prendergast: A great deal of it in the Chicago terminal yes sir.

Mr. Dynes: Coal received at Galewood is carried east to Pacific Junction is it to get to the connection with the northwest line that runs up to Morton Grove?

Mr. Prendergast: Yes, sir.

Mr. Dynes: And that is a distance of four or five miles in the congested part of the city is it?

Mr. Prendergast: Three miles from Galewood to Pacific Junction.

Mr. Gallagher: Let's see, did you say that is in the congested part of the city?

Mr. Prendergast: I did not say that, no. I just answered as to the distance.

Mr. Dynes: I probably ought not to have said a congested part of the city, but within the city.

140 Mr. Prendergast: Within the city, yes. Insofar as our tracks are concerned there I would say they are congested because that is the line into the Galewood yards from Pacific Junction where all the trains have to come from the north or any other way to get into these yards.

Mr. Dynes: I used the word congestion in respect to the city instead of to the traffic as I should have. However, you have cleared me on that.

Mr. Prendergast: Yes.

Mr. Dynes: Now, at Pacific Junction it is transferred to the main line for main line delivery at Morton Grove, is it?

Mr. Prendergast: They connect with the main line at Pacific Junction through a Y.

Mr. Dynes: What part of that main line lies within the city of Chicago?

Mr. Prendergast: Up as far as Edgebrook. Edgebrook is in the city. The third station south of Morton Grove.

Mr. Dynes: And that is about five or six more miles, is it?

Mr. Prendergast: I should say six miles farther to Edgebrook from Pacific Junction.

Mr. Gallagher: Mr. Poehlman said that is the first station south of Morton Grove.

Mr. Dynes: Yes, Edgebrook is the first station south.

Mr. Prendergast: Is it? I thought Golf came in there.

Mr. Poehlman: No, Golf is north of Morton.

Mr. Prendergast: Yes, that is correct.

Mr. Dynes: All of this district is the heaviest traffic part of the defendant's system?

Mr. Prendergast: Yes, it is the heaviest tonnage division we have.

141 Mr. Dynes: What is the fact in regard to the circumstance of a 20-cent delivery at Franklin Park that was mentioned?

Mr. Prendergast: We are forced to extend that switching limit out to Franglin Park on account of our new yards at Manheim. We know there is nothing in it and it costs more than that, but on account of receiving coal and other freight from the Indiana Harbor Belt at Franklin Park and Godfrey Yard, which is Manheim, we have to do it.

Mr. Gallagher: I move to strike out that part of the answer which refers to the cost of traffic unless the facts and figures showing the cost are given.

Mr. Dynes: You ought to let him get it all in.

Examiner Pugh: Your motion is in the record. Go on now and complete your answer.

Mr. Prendergast: I have just about finished.

Mr. Dynes: That is in the immediate vicinity of Franklin Park, is it?

Mr. Prendergast: Yes, sir, just beyond Franklin Park the tracks connect.

Mr. Dynes: What are the facts in regard to the reciprocal switching comparisons made by these witnesses? Will you comment on those?

Mr. Prendergast: They were comparing a road haul figure or industrial switching rate you might say with the reciprocal switching which we perform for a lower figure for connecting lines in view of the fact that they perform the same service for us when the shipments are reversed.

142 Examiner Pugh: Yes, I just wanted to get the record clear.

Mr. Dynes: In order to get it in the form of sworn testimony I will ask to have the court's question read. Is that rate involved between Morton Grove and Chicago a switching rate or a line haul rate?

Mr. Prendergast: A line haul rate.

Mr. Dynes: You understand that covers from Galewood in Chicago, too?

Mr. Prendergast: Yes, sir.

Mr. Dynes: In your judgment as a traffic man is this rate to Morton Grove which is complained of any more than a reasonable rate under the conditions under which the service is rendered?

Mr. Gallagher: I object, because the witness has not qualified to show what is a reasonable rate.

Examiner Pugh: Your objection is in the record. Let the question be answered.

Mr. Prendergast: Under the circumstances we do not consider that—I do not consider that rate unreasonable.

Mr. Dynes: Do you consider that the reduction asked for would be an unreasonably low or non-compensatory rate?

Mr. Prendergast: Yes, sir.

143 Mr. Dynes: Will you refer to your memorandum, Mr. Prendergast, please, and give us the limits of the Chicago, Milwaukee & St. Paul Railway Company switching district in its Chicago terminals?

Mr. Prendergast: The Chicago, Milwaukee & St. Paul switching territory in Chicago commences at Lake Michigan and Irving Park Boulevard to 40th avenue; thence north along 40th avenue to Montrose Boulevard; thence west along Montrose Boulevard to Central avenue; thence south along Central Avenue to Fullerton avenue; thence west along Fullerton avenue to Austin avenue; thence south along Austin avenue to North Avenue; thence east along North avenue to 48th avenue. That is where we would stop.

144 Mr. Dynes: Now, in regard to that delivery to Butler Brothers at the Union Street yards, how far from the main station of the Chicago, Milwaukee & St. Paul Railway Company of Chicago is that delivery made approximately?

Mr. Gallagher: I object because it is immaterial: coal is not delivered to a passenger station.

Examiner Pugh: Let the objection be noted.

Mr. Prendergast: Butler Brothers are located two blocks north of the passenger station.

Mr. Dynes: Do you have anything further you desire to add.

Mr. Prendergast: Yes, I have something further to put in. I wanted to say that this coal for Peohlman Brothers is all handled on what we call C. & M. Local 91, under regular train orders. We have a great deal of trouble with it because Poehlman Brothers buy it in large lots, I presume when the market is low, and they order this stuff over to Galewood yards. At one time several months ago I recollect we had about eighteen cars up at Morton and nineteen in the yards. We were compelled to switch back and forth—

Mr. Gallagher: When did this happen?

145 Mr. Prendergast (continuing): We were compelled to switch back and forth in there, in getting our own business through the yard. They are asking for special service at all times, they keep after us for prompt attention, and that is the reason I said I did not think the 40-cent rate was unreasonable. This coal comes to us in foreign cars; we have to pay per diem at the rate of 30 cents a day from March until July of each year, and 35 cents a day from August to February each year and that eats up a lot of the profit when it is left to lie around in the yards, and you cannot collect for car service because you have not set the cars where they want them.

They testified that cars were set in there and spotted time and time again at their own plant. Mr. Poehlman testified that it was necessary to respot them. When this Chicago switching arrangement was made to take in Edgewater and some of these points on ordinary commodities it was understood by the executive officers of the various

roads who made the arrangement with the Chicago Association of Commerce, and with the Illinois Manufacturers' Association that there would be no change whatever made in coal rates. Everybody admitted that the rate at which coal was handled in the Chicago district were too low, but there was no change made, and that is the reason why the switching tariffs don't cover coal.

Mr. Gallagher: I move to strike out that answer because the opinions and the deeds of the members of these distinguished organizations cannot affect the rights of the petitioner in this case to have a fair and reasonable rate.

Examiner Pugh: That is in the record.

146 Mr. Prendergast: The Chairman of the Illinois Manufacturers' Association said he had authority to talk for the coal men just the same as the lumbermen.

Mr. Gallagher: But we are in the greenhouse business.

Mr. Prendergast: And Mr. Poehlman, I believe, was a member of Mr. Glenn's organization.

Mr. Gallagher: I object to all this your Honor. I do not think it is a matter that should be brought up here at all on question of what is a fair rate.

Examiner Pugh: You have probably gone about far enough along that line.

Mr. Prendergast: That is all.

Mr. Dynes: Now, just one or two questions you suggested to me. How long has this rate been in effect, I mean the rate to the plant of this complainant?

Mr. Prendergast: To Morton Grove it has been in effect for years.

Mr. Dynes: It is not a new rate, but an old established rate.

Mr. Prendergast: No sir, there has no change been made lately whatever.

Mr. Dynes: Are there any discriminatory features about that, or other points along the line enjoying any better or different rates?

Mr. Prendergast: Not on the C. M. & St. P.

Mr. Dynes: I mean on the lines of this defendant.

Mr. Prendergast: Yes, that is what I said.

Mr. Dynes: That is all.

147 Cross-examination:

Mr. Gallagher: Coal that is destined to Morton Grove and coal that is destined to Buena Park passes through Galewood and is transferred to your road at Galewood, is it not?

Mr. Prendergast: Ordinarily it is.

Mr. Gallagher: And then they both move through these congested tracks to Pacific Junction?

Mr. Prendergast: That is right.

Mr. Gallagher: Then one of them branches to the northwest and goes to Morton Grove, is that right?

Mr. Prendergast: That is right.

Mr. Gallagher: Then one branches over towards Goose Island in your Division Street yards?

Mr. Prendergast: That is right.

Mr. Gallagher: And then passes up to Buena Park?

Mr. Prendergast: That is true.

Mr. Gallagher: Take the coal going to Buena Park after it leaves Pacific Junction, it passes through the most congested part of your terminal does it not?

Mr. Prendergast: I would not admit that because that is a freight track. Bloomingdale road, there are no road trains on that track.

Mr. Gallagher: Don't you know that the most congested part of your terminal in Chicago is right over there at Goose Island?

Mr. Prendergast: So far as the coal dealers and heavy manufacturers are concerned, yes.

Mr. Gallagher: I am referring now to the transportation business of the St. Paul road.

148 Mr. Prendergast: I say it is so far as those yards are concerned as to coal going in, but not coming out.

Mr. Gallagher: And this coal goes through those yards and passes up to Buena Park?

Mr. Prendergast: It goes along to C. & E. Junction and then north on the C. & E. Junction, yes, sir.

Mr. Gallagher: The distance to Morton Grove and to Buena Park are substantially the same, are they not?

Mr. Prendergast: Figuring from where, from Galewood?

Mr. Gallagher: From Galewood.

Mr. Prendergast: Buena Park is about three miles less haul with us.

Mr. Gallagher: Will you kindly tell the Commission why you charge twice as much to Morton Grove as you do to Buena Park?

Mr. Prendergast: Buena Park is in the switching limits, it is in the city.

Mr. Gallagher: The only way you justify that charge, is that you say it is inside of the switching limits?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: Take the case of Edgewater, which is how far north of Buena Park?

Mr. Prendergast: It is a mile and an eighth.

Mr. Gallagher: That rate was 20 cents up to about two months ago, was it not?

Mr. Prendergast: That is right.

Mr. Gallagher: At that time you advanced that rate because the coal dealers at Rosehill on the Northwestern had filed a complaint with the Commission, alleging that their rate of 30 cents was discriminatory as against them because your road had a rate of
149 20 cents to Edgewater, and thereupon you advanced your rate to 30 cents, isn't that right?

Mr. Prendergast: I wouldn't say we did it after that complaint was filed.

Mr. Gallagher: But you did do it?

Mr. Prendergast: I didn't know anything about the complaint before I did it.

Mr. Gallagher: But you did do it after the complaint was filed?

Mr. Prendergast: I did not know anything about the complaint

at the time, but for another reason, that is to put our line on a parity with the other fellow.

Mr. Gallagher: Mr. Prendergast,——

Mr. Prendergast: I am under oath here.

Mr. Gallagher: Do you say here you did not know that those shippers at Rosehill had filed a complaint with the Interstate Commerce Commission.

Mr. Prendergast: I did not, because it was against the Northwestern road, and I would not be interested.

Mr. Gallagher: And do you go on record as saying that you did not advance that rate ten cents a ton at the suggestion of the Northwestern in order to equalize those charges?

Mr. Prendergast: I didn't say that.

Mr. Gallagher: Isn't that a fact?

Mr. Prendergast: That is the fact, the Northwestern took it up with us and we looked it over and figured it out that we ought to get as much as Rose Hill.

Mr. Gallagher: No, up to the time you did that at the suggestion of the Chicago & Northwestern, a competing carrier, your rate for many years had been 20 cents a ton?

150 Mr. Prendergast: Oh, I would say five or six years anyway.

Mr. Gallagher: You spoke of a certain congestion at Galewood in April of this year.

Mr. Prendergast: Yes.

Mr. Gallagher: In the deliveries of Poehlman's coal?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: Is it not a fact that that congestion was due to the delays in transportation on the trunk lines?

Mr. Prendergast: Not according to our records. Our records showed that Morton Grove was full, could not put any more in, and as soon as we took one car out we sent another in.

Mr. Gallagher: Do you know the date of that?

Mr. Prendergast: No.

Mr. Gallagher: Is it not a fact that bunching was very common at that time with the trunk lines?

Mr. Prendergast: I will admit that.

Mr. Gallagher: In bringing coal into Chicago?

Mr. Prendergast: Yes.

Mr. Gallagher: So Poehlman might have been absolutely free from any connection with bunching?

Mr. Prendergast: I testified we got it in bunches.

Mr. Gallagher: You don't know how Poehlman buys his coal? He states to me now that he buys it under contract.

Mr. Prendergast: That is what he told me several months ago before he started this case.

Mr. Gallagher: He applied to you several times for a reduction in this rate did he not?

Mr. Prendergast: Yes, sir, he did.

Mr. Gallagher: Before he filed this complaint?

151 Mr. Prendergast: Yes sir, he did.

Mr. Gallagher: Is it not a fact that during this period you

sent out to Poehlman ten or twelve cars of coal that he had not bought?

Mr. Prendergast: I don't know anything about that.

Mr. Gallagher: And that he kicked on it. What did you do with it?

Mr. Poehlman: He unloaded ten cars before we found out it was St. Paul coal.

Mr. Prendergast: From what point? I don't understand your question.

Mr. Dynes: I don't understand what that has to do with this.

Mr. Gallagher: He is talking about congestion at Poehlman's yards.

Examiner Pugh: Talk to me, gentlemen. There are too many talking now.

Mr. Gallagher: After this coal leaves the Pacific Junction and moves up to Morton Grove it is passing through a part of your line where there is a very heavy freight business, is that your evidence?

Mr. Prendergast: That is true, yes sir.

Mr. Gallagher: Coke that goes to Milwaukee goes up that way, does it not?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: And then passes on to Milwaukee, a distance of about how many miles beyond Morton Grove?

Mr. Prendergast: Milwaukee is 85 miles from Chicago.

Mr. Gallagher: The coal that goes to Milwaukee of course goes over the same road?

Mr. Prendergast: Yes sir.

152 Mr. Gallagher: On a rate of 60-cents a ton?

Mr. Prendergast: That is true.

Mr. Gallagher: What is your rate to Edgebrook on coal?

Mr. Prendergast: The same as Morton.

Mr. Gallagher: Have you the tariff on that?

Mr. Prendergast: I haven't the tariff with me, but it is the same as Morton.

Mr. Gallagher: There isn't much business there, is there?

Mr. Prendergast: No, not much.

Mr. Gallagher: Butler Brothers are located in a very congested part of your terminal, are they not?

Mr. Prendergast: That is true, yes.

Mr. Gallagher: What is the rate on brick from Galewood to Morton Grove, do you know that?

Mr. Prendergast: I don't know it.

Mr. Gallagher: How heavy does brick load in a car?

Mr. Prendergast: Brick will run from 15,000 to 20,000, 60,000 or 80,000 pounds usually.

Mr. Gallagher: 60,000 to 80,000 pounds?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: You have certain coal mines on your road in Illinois, have you not?

Mr. Prendergast: Yes, there are a number of coal mines on our road in Illinois.

Mr. Gallagher: Now, isn't the reason why you keep this rate up

from Galewood to Morton Grove, that you are attempting to discourage Poehlman Brothers from buying coal that comes off other lines and are seeking to compel them to buy coal that comes in on your road?

Mr. Prendergast: No sir.

Mr. Gallagher: Isn't that your policy?

Mr. Prendergast: No sir, it is not my policy.

153 Mr. Gallagher: As to coal in the Chicago terminal?

Mr. Prendergast: No, sir. I might answer you and explain that I asked Mr. Poehlman to buy some coal where we could get the road haul because the rate would be cheaper than the rate he paid from the east, and he told me he could not use the Illinois coal because there was sulphur in it and it killed the plants.

Mr. Gallagher: Can you suggest any reason to the Commission why greenhouses located at Des Plaines a greater distance from the central market, should receive fuel on the basis of the Chicago rate; and that greenhouses located at Morton Grove should be paying 40 cents a ton for their fuel in addition to the Chicago rate?

Mr. Prendergast: Sure, the Northwestern road is foolish.

Mr. Gallagher: No other reason occurs to you?

Mr. Prendergast: No, that covers it all, when you figure the service.

Mr. Gallagher: That is all.

Examiner Pugh: Stand aside. Any other witnesses, Mr. Dynes.

Mr. Dynes: That is all.

Examiner Pugh: Anything further on behalf of the complainant?

Mr. Gallagher: I would like to have Mr. Prendergast clear up one point. You say you spot coal for Poehlman?

Mr. Prendergast: Yes.

Mr. Gallagher: You spot coal for all industries, do you not the same way?

Mr. Prendergast: I said we re-spotted coal for Poehlman.

Mr. Gallagher: You re-spot for everyone don't you?

154-166 Mr. Prendergast: No, not if we know it. He testified to that himself.

Mr. Gallagher: When do you respot coal?

Mr. Prendergast: He testified to that. He said he had to bring it up to his bins and he said he had to respot the manure to load it into pits, and I think I will look into that myself when I get back to the office.

Examiner Pugh: Is there anything else?

Mr. Gallagher: No.

Examiner Pugh: No further evidence being offered, the case is considered as closed so far as the taking of testimony is concerned.

* * * * *

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Authentication of Record.

STATE OF ILLINOIS,
Supreme Court, ss:

I, Charles W. Vail, Clerk of said Court, Do Hereby Certify that the foregoing is a true, full and complete transcript of the record and

proceedings in the case of State Public Utilities Commission of Illinois, successors of Railroad and Warehouse Commission of Illinois ex rel. Poehlmann Brothers Company, Appellee, vs. Chicago, Milwaukee & St. Paul Railroad Company, Appellant, and also of the Opinion of the Court rendered therein, as the same now appears on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 1st day of June A. D. 1915.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court.

168-185 Be it remembered, to-wit, that on the 15th day of May, A. D. 1915, there was duly filed by Chicago, Milwaukee & St. Paul Railroad Company, appellant in this Court and plaintiff in error in the said petition for writ of error herein mentioned, in the office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. James H. Cartwright, Chief Justice of the Supreme Court of Illinois, with the original order by the said Chief Justice upon the said petition allowing said writ of error, which documents are in words and figures as follows, to-wit:

186 In the Supreme Court of the United States, October Term,
A. D. 1914.

No. 1032.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Plaintiff in
Error,
vs.
STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS, Defendant in
Error.

Error to Supreme Court of Illinois.

Now comes the plaintiff in error, Chicago, Milwaukee & St. Paul Railway Company, by Burton Hanson and O. W. Dynes, its counsel, and states that it intends to rely on the following errors:

Statement of Errors Relied Upon.

1. The judgment of the Supreme Court of Illinois is in violation of Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, and the court erred in entering said judgment.

2. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case places a burden upon in-

terstate commerce and discriminates against interstate commerce and in favor of state commerce, in violation of Paragraph 3 of Section 8 of Article I of the Constitution of the United States, and the Supreme

187 Court of Illinois erred in refusing to set aside said order of the Railroad and Warehouse Commission of Illinois and in entering a judgment sustaining said order.

3. The judgment of the Supreme Court of Illinois is in contravention of an Act entitled An Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and is more particularly in contravention of Sections 1, 2, 3, 6, 13 and 15 thereof, as amended, and the Supreme Court erred in entering said judgment.

4. The order of the Railroad and Warehouse Commission of the State of Illinois, appealed from in this case, places a burden upon interstate commerce and discriminates against interstate commerce and in favor of state commerce, in contravention of an Act entitled An Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof, and is more particularly in contravention of Sections 1, 2, 3, 6, 13 and 15 thereof, as amended, and the Supreme Court of Illinois erred in refusing to set aside said order of the Railroad and Warehouse Commission of Illinois, and in entering a judgment sustaining said order.

5. The Supreme Court of Illinois erred in refusing to hold that under the third paragraph of Section 8 of Article I of the Constitution of the United States and under the Federal Act to Regulate Commerce, as amended, the Railroad and Warehouse Commission of the State of Illinois was without jurisdiction to enter an order so affecting a through rate as to reduce, solely for the benefit of Illinois ship-

188 pers and producers of coal, the charges for a factor thereof made by an interstate common carrier wherein the services performed by the common carrier are identical on interstate and intrastate shipments of coal.

6. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case has the effect of obliging interstate shippers of coal and producers of coal in other states than Illinois, to pay more for identically the same service of a common carrier than Illinois shippers and producers of coal pay therefor, and the Supreme Court of Illinois erred in entering a judgment affirming and giving effect to said order of said Railroad and Warehouse Commission.

7. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case is unreasonable and unlawful in that without finding the through rate excessive or discriminatory and without facts before it on which to make such finding, it reduces, solely for the benefit of Illinois shippers and producers of coal, the charges for a factor of the service involved that is a common factor in interstate and Illinois movements of coal and which common factor the Interstate Commerce Commission had held, on the same record, was not shown to be subject to separate regulation, and the Supreme Court of Illinois erred in sustaining said order of said Railroad and Warehouse Commission.

8. The Supreme Court of the State of Illinois erred in sustaining the order of the Railroad and Warehouse Commission of the State of Illinois, holding, on the complaint of the petitioner, Poehlmann Brothers Company, that the charges for that factor of a through rate which lies between Galewood, Illinois, and Morton Grove, Illinois, could be regulated and reduced without regard to the reasonableness of the through rate, when it appeared in the record before this court that the Interstate Commerce Commission had held, on the same evidence and in the case of the same petitioner, that that factor could not be regulated or reduced, independent of and without regard to the question of the reasonableness of the through rate as a whole.

9. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case authorizes the use by the State of Illinois of an instrument of interstate commerce in a discriminatory manner so as to inflict injury on interstate commerce and so as to require an interstate carrier to do that which Congress, by the enactment of the Act to Regulate Commerce, has prohibited the interstate carrier doing, and the Supreme Court of Illinois erred in sustaining and affirming said order of said Railroad and Warehouse Commission.

10. The Interstate Commerce Commission having held, on the same evidence presented to the Railroad and Warehouse Commission of the State of Illinois in this case, that the Chicago, Milwaukee & St. Paul Railway Company was not obliged to reduce its charges for that part of the through service involved in both interstate and Illinois coal shipments unless and until the through rate was shown to be unreasonable or discriminatory, the order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case, being in conflict with the opinion of the Interstate Commerce Commission, entered on the same state of facts, is void because of being in contravention of the Act to Regulate Commerce and the action of the Interstate Commerce Commission taken pursuant thereto, and the Supreme Court of Illinois erred in affirming and giving effect to said order of said Railroad and Warehouse Commission.

Parts of the Record Necessary to Print.

And counsel for plaintiff in error further state that the parts of the record which they think necessary for the consideration of the foregoing errors relied upon are the following, namely:

1. The letter of William Kilpatrick, Secretary of the Railroad & Warehouse Commission of Illinois, dated November 13, 1913, addressed to John H. Drennan, Clerk of the Circuit Court, Springfield, Illinois, submitting certified copy of the record of this case in the office of the Railroad & Warehouse Commission to the Circuit Court of Sangamon County, Illinois. The foregoing will be found on page 5 of the record filed in this court.

2. Petition for the fixing of through rates on intrastate shipments

of coal and manure to Morton Grove, Cook County, Illinois, on which this case was heard before the Railroad & Warehouse Commission of Illinois. Said petition will be found on pages 6, 7, 8, 9, 10, 11, 12 and 13 of the record filed in this court.

191 3. The separate answer of the Chicago, Milwaukee & St. Paul Railway Company to the aforementioned petition, which answer will be found on pages 14, 15 and 16 of the record filed in this court.

4. The answer of the Illinois Central Railroad Company to the aforementioned petition, which answer will be found on pages 19, 20, 21 and 22 of the record filed in this court.

5. The answer of The Belt Railway Company of Chicago to the aforementioned petition, which answer will be found on pages 29 and 30 of the record filed in this court.

6. The opinion of the Railroad & Warehouse Commission of Illinois and order of said Railroad & Warehouse Commission appealed from in this proceeding, which said opinion and order will be found on pages 31, 32, 33, 34, 35, and 36 of the record filed in this court.

7. The stipulation by the parties filed with the Circuit Court of Sangamon County that the cause be submitted to that court upon the evidence introduced by both parties during the hearing of the cause by the Railroad & Warehouse Commission of Illinois, which said stipulation will be found on page 41 of the record filed in this court.

8. The recital that the testimony taken and heard before the Railroad & Warehouse Commission was filed with the Clerk of the Sangamon County Circuit Court and that a copy of same appears in this record, which recital will be found on page 46 of the record filed in this court.

192 9. That part of the opening statement made by Mr. Gallagher before the Railroad & Warehouse Commission beginning at the top of page 48 and extending to and including the words: Mr. Dynes—"That will be all right," on page 49 of the record filed in this court.

10. Also the further sentence from Mr. Gallagher's statement found on page 50 of the record filed in this court which reads as follows: "I want to ask Mr. Poehlmann a few questions and I am willing to stipulate that the case be submitted on this evidence."

11. Also all of page 51 of the record filed in this court and all of page 52 of the record filed in this court.

12. All of that portion of page 58 of the record filed in this court beginning with and following the lines: "Mr. Clardy—We understand our proportional rate is not involved. If it is we cannot agree."

13. All of pages 59, 60, 61, 62, 63, 64, 65 and the first three (3) words at the top of page 66, namely the words: "on the transcript."

14. Also the first paragraph at the top of page 69 of the record filed in this court and the line succeeding said first paragraph, which line reads as follows: "Chairman—I so understand it."

15. All of page 101 of the record filed in this court.

16. Page 103 of the record filed in this court, except the indexes.
17. All of pages 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153 and 154 of the record filed in this court.
18. All of pages 90 and 91 of the record filed in this court.
19. All of page 92 of the record filed in this court.
20. The first three (3) lines on page 93 of the record filed in this court and the first six (6) words on the fourth line, ending with the words "Supreme Court".
21. The last paragraph on page 94 of the record filed in this court.
22. All of page 96 of the record filed in this court.
23. All of page 97 of the record filed in this court.
24. All of pages 98, 99 and 100 of the record filed in this court.
25. All of page 106 of the record filed in this court.
26. All of page 167 of the record filed in this court.
27. All of page 168 of the record filed in this court.
28. The statement of errors relied upon as set forth on pages 1 to 5 hereof.

Respectfully submitted,

BURTON HANSON,
O. W. DYNES,

*Counsel for Chicago, Milwaukee & St. Paul
Railway Company, Plaintiff in Error.*

194 STATE OF ILLINOIS,
County of Cook, ss:

Julius M. Lorenz being first duly sworn on oath deposes and says that he delivered copies of the foregoing document to Everett Jennings, Esq., and M. F. Gallagher, Esq., counsel for the State Public Utilities Commission of Illinois, Defendant in Error, this first day of September, A. D. 1915.

JULIUS M. LORENZ.

Subscribed and sworn to before me this first day of September, A. D. 1915.

[Seal W. D. Millard, Notary Public, Cook County, Ill.]

W. D. MILLARD,
Notary Public.

195 [Endorsed:] 495/24776. No. 1032. United States of America, in Supreme Court. Chicago, Milwaukee & St. Paul Railway Company, Plaintiff in Error, vs. State Public Utilities Commission of Illinois, Defendant in Error. Statement of errors relied upon and specification of parts of record to be printed. Burton Hanson, O. W. Dynes, Counsel for Plaintiff in Error.

196 File No. 24,776. Supreme Court U. S. October term, 1915. Term No. 495. Chicago, Milwaukee & St. Paul Rwy. Co., Plaintiff in Error, vs. State Public Utilities Comm. of Illinois. Statement of errors relied upon, and designation by plaintiff in error of parts or record to be printed. Filed September 3rd, 1915.

Endorsed on cover: File No. 24,776. Illinois Supreme Court. Term No. 495. Chicago, Milwaukee & St. Paul Railway Company, Plaintiff in Error, vs. The State Public Utilities Commission of Illinois. Filed June 12th, 1915. File No. 24,776.

